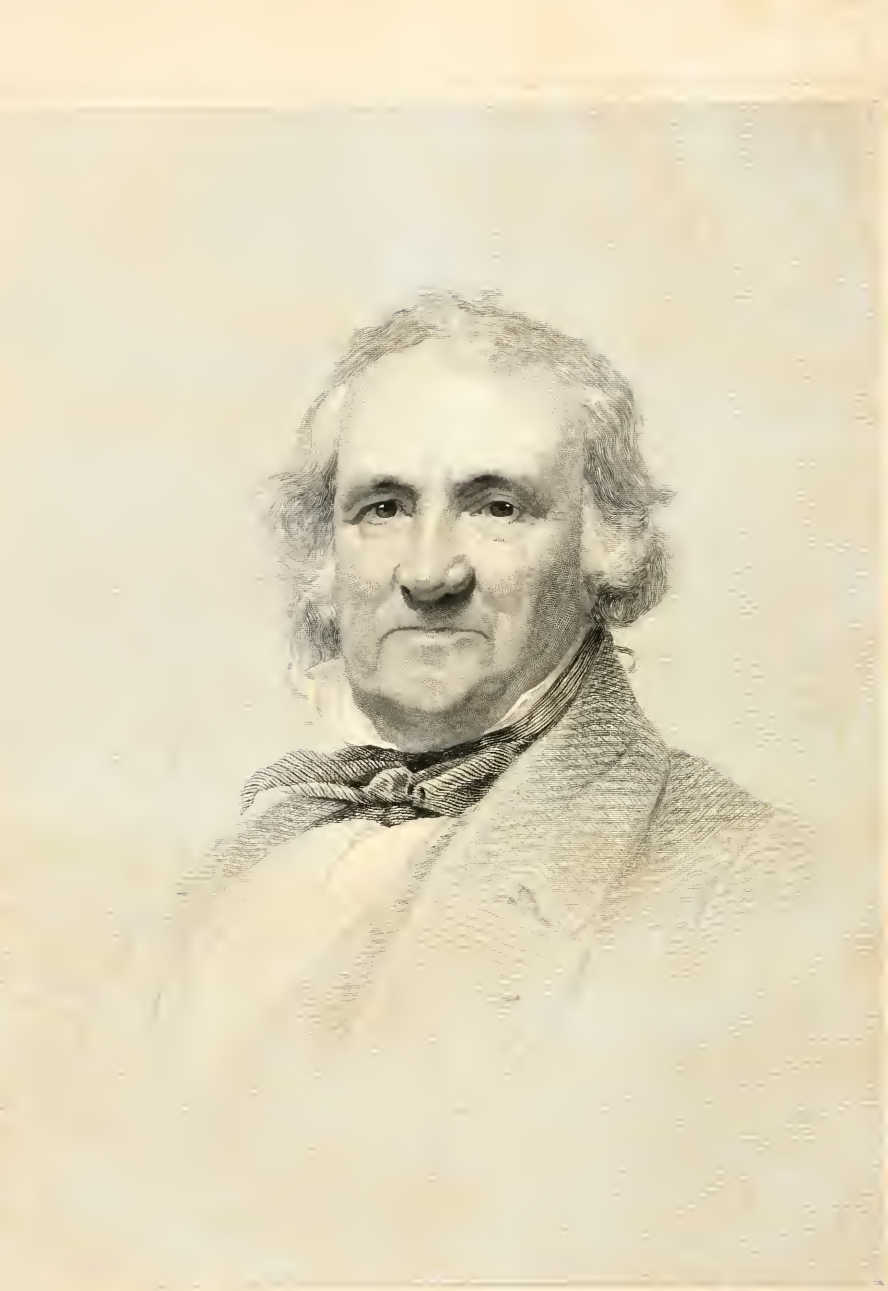

Jacob Barker

JACOB BARKER'S

LETTERS,

DEVELOPING THE CONSPIRACY

FORMED IN 1826 FOR HIS RUIN.

LETTER I.

The disasters of the stock companies, in 1826, occasioned an immense loss of property to this community. The managers of many of those companies, finding themselves hard pressed for money to meet their engagements, applied to me to raise funds for their relief. I was induced to comply with their solicitations, because I believed that most of the companies only required temporary aid to save them from failure; because I had a deep interest in the stocks of other companies, which would be greatly diminished in value, if the embarrassed companies failed; and because I expected a fair remuneration for any service I should render. My efforts were successful, so far as they saved the Fulton Bank and the Morris Canal and Banking Company from suspending payment; but all my exertions to save the Life and Fire Insurance Company proved unavailing. My pecuniary sufferings, growing out of the embarrassments and failure of the stock companies of that year, were distressingly great; but my other sufferings were infinitely greater. My reputation was assailed; the press was let loose upon me; every falsehood that mortification and disappointment could suggest, was industriously circulated to my prejudice: and very many of our most intelligent and best disposed citizens were deceived into unfavourable opinions in relation to the part I had acted.

Upon the several investigations of the charges made against me, I laboured under the greatest disadvantages. Not to mention other grievances, I would particularly remark, that most of the persons acquainted with the transactions, though indicted before the preferring of the charges against me, were again coupled with me in those charges, for the express purpose, as I have always believed, of depriving me of their testimony. This attempt was but too successful; I was made responsible for the acts of persons, who, if I could have called them as witnesses, would have been compelled to say, that I had no agency in, or knowledge of, those acts. In addition to this, several persons deeply implicated in the transactions complained of, and most of whom were themselves actually indicted, were promised absolution, if they would testify or procure evidence against me. Some of these were examined as witnesses on the trials; and though their testimony amounted to little or nothing, so far as I was concerned, yet it was easy

to see under what bias it was given. Others of them did me more injury by working in the dark.

Simultaneously with these proceedings, a suit has been, and is still pending, in the Court of Chancery, against me and others, in favour of certain stockholders and creditors of the Life and Fire Insurance Company. In this suit, all the transactions complained of in the criminal prosecutions have been put in issue, and the parties to them, with the single exception of the pretended purchaser of the Tradesmen's Bank, have been fully examined as witnesses; and as to the Tradesmen's Bank, enough has been elicited for my purpose. Upon this examination they have declared, under the solemnity of their oaths, and in the most positive terms, that Jacob Barker had no agency in either of the transactions complained of as fraudulent; that he was not consulted in respect to either of them; and that he had no knowledge of either until after it had been consummated. Other testimony has also been elicited in the course of the suit in chancery, throwing much light on the conspiracy got up for my destruction.

The evidence thus adduced will satisfy all who will take the trouble to peruse it, that I had no improper connexion with the transactions complained of; that my whole offence consisted in advancing money on stocks, for which regular certificates were furnished; and that if the same witnesses had been allowed to give testimony, it would so have been made manifest on the trials.

As reputation in every relation of life, whether as a father, husband, merchant, or man, is deservedly dear, I consider it my duty to defend myself against every unfavourable imputation. With this view I intend to lay before the public, testimony which could not before be obtained.

I shall do this with as much brevity as possible, in a series of letters, which I commend to the careful consideration of my fellow citizens. In a particular manner I submit them to the perusal of Judge Edwards, the District Attorney, and every member of the grand juries and petit juries, who took part in investigating the case. Judge Edwards will do well to compare the new testimony with his charge to the jury, and from the errors he has committed in my case, to be careful how he draws inferences unfavourable to a person on trial without testimony, from circumstances perfectly reconcilable with pure motives and honourable conduct.

A principal charge against me was, that I was a party to the improper issuing and use of certificates of stock in the Morris Canal and Banking Co., to the amount of $250,000, which had been signed by the president pro tem. in blank, and left with the cashier for a different and special purpose; and that I was knowing, or a party to the issuing, in the lieu thereof, Life and Fire bonds to the Morris Canal and Banking Co. to the amount of $250,000. With what truth, will be seen by the following testimony.

IN CHANCERY.

Henry Barclay, Richard H. Hough, William G. Bucknor, and others,

vs.

Henry Eckford, Jacob Barker, and others.

On a reference in this cause before Thomas Bolton, Esq. Master in Chancery, the following testimony has been taken.

Thomas Vermilyea sworn, on the part of the complainants. Was asked by Mr. Hoffman, counsel for the complainant—Was you a director of the Life and Fire Insurance Company, from May, one thousand eight hundred and twenty-five, to the eighteenth of July, eighteen hundred and twenty-six?

He answers—I was.

Being asked—Did the Life and Fire Insurance Company enter into any arrangement or agreement with the Fulton Bank, or with Spencer and Brown, for the return of the Fulton Bank stock?

He answers—Not to my knowledge.

Being asked—Did they enter into any agreement with the Morris Canal Company for the Fulton Bank stock?

He answers—An agreement was made to procure two thousand shares of Fulton Bank stock, and to give twenty-five hundred shares of Morris Canal stock for the same. In order to obtain the Morris Canal stock, an agreement was made, in writing, between the Morris Canal Company and the Life and Fire Company, whereby the Life and Fire Insurance Company was to give their bonds for two hundred and fifty thousand dollars to the Morris Canal Company, as security for the return of the Morris Canal stock.

Being asked—Between whom was the said agreement made for the exchange of the Morris Canal stock for the Fulton Bank stock?

He answers—It was made originally between Brown and Spencer, of the one part, with the consent of the Fulton Bank, and Henry Eckford and William P. Rathbone, of the second part, under the guaranty of Henry Eckford for the return of the Fulton Bank stock, with the knowledge and consent of the Life and Fire Insurance Company and the Morris Canal Company, for the benefit of the Life and Fire Insurance Company, with an understanding on my part, that the Morris Canal Company should receive a facility of fifty thousand dollars in money in consequence of said transaction.

Being asked—Were not Joseph G. Swift, Henry Eckford, yourself, and William P. Rathbone, at the time of the aforesaid transaction for the exchange of the Morris Canal for the Fulton Bank stock, directors and members of the finance committee of the Morris Canal Company, and did they not act as such in the said exchange?

He answers—They all acted as such, with the exception of William P. Rathbone, who was a director, but was not one of the finance committee; and although Mr. Eckford was not in New-York on the tenth

day of May, eighteen hundred and twenty-six, the date of the transaction, yet, previous to his departure from New-York, which was about the seventh day of that month, the arrangement for the exchange of the said stock had been made by him, with directions by him for carrying the same into effect as soon as it could be done, and on his return was ratified by him, and the resolution of the Morris Canal Company was signed by him. That previous to Mr. Eckford's leaving New-York, as aforesaid, it was understood between Mr. Eckford, Mr. Rathbone, myself, and others, that the Life and Fire Insurance Company were to issue their bonds for the amount of the said Morris Canal stock, at par.

Being asked—When Mr. Eckford left New-York, in May, eighteen hundred and twenty-six, did he direct you to procure the two thousand shares of Fulton Bank stock, and to deliver it to Mr. Barker, and receive money from him, from time to time, as the Life and Fire Insurance Company should require it?

He answers—Those directions were given to Mr. Rathbone and myself.

Being asked—When, where, and by whom was the arrangement made for procuring the said Fulton Bank stock?

He answers—There were different conversations on this subject, between Mr. Eckford, Mr. Rathbone, and myself, at different times and at different places, previous to Mr. Eckford's departure for Baltimore, as above stated, and in one or two instances, in the presence of Mark Spencer.

Being asked—Was there ever a meeting at your house, between Mr. Eckford, Mr. Rathbone, and yourself, on the subject, and when?

He answers—Yes, there was, on an evening shortly previous to Mr. Eckford's departure for Baltimore.

Being asked—Was any one else present?

He answers—I think not.

Being asked—Was Jacob Barker ever at your house, relative to business of the Life and Fire Insurance Company, the Fulton Bank, or the Morris Canal Company, previous to the evening of July seventeenth, eighteen hundred and twenty-six, (the evening before the failure of the Life and Fire,) and was he there on that evening by invitation, and by whom was he invited there?

He answers—I have not any recollection or belief that he was there, previous to the evening above inquired about, on the subject of any business; Mr. Barker was there on that evening, and was invited there at the instance of Mr. Eckford and myself, and I think it probable Mr. Rathbone went after Mr. Barker.

Being asked—Was Mr. Barker concerned in, or did he take part as principal or agent, in procuring the twenty-five hundred shares of Morris Canal stock, heretofore referred to?

He answers—Not within my knowledge or belief.

Being asked—Did Mr. Barker ever examine the books of the Life and Fire Insurance Company, previous to its failure, viz. July the eighteenth, eighteen hundred and twenty-six?

He answers—Not to my knowledge or belief.

Mr. Vermilyea again called, and asked by Mr. Barker—Did Mr.

Barker take any part, as principal or agent, in procuring to be transferred, by the president and directors of the Fulton Bank, to you and to John M'Dougal Lawrence, in eighteen hundred and twenty-six, each one thousand shares of Fulton Bank stock? after such transfer to you, did you not, at the request of William P. Rathbone, transfer the same to William R. Thurston, and was not such transfer made with the knowledge and approbation of the officers of the Fulton Bank?

He answers—That Mr. Barker took no part in procuring such transfers, to deponent's knowledge or belief, as principal or agent. Witness did transfer the one thousand shares to William R. Thurston, at the request of William P. Rathbone, and it was made with the approbation of the cashier, and in his presence.

Being asked—Did Mr. Barker know that Life and Fire bonds had been given in exchange for the twenty-five hundred shares of the Morris Canal and Banking Company's stock?

He answers—No, not within my knowledge or belief.

Being asked—Was Mr. Barker, to your knowledge or belief, knowing to the fact, that Mr. Bayard, the president pro tem. of the Morris Canal and Banking Company, signed stock certificates in blank, and that such blanks had been used by Mr. Talman, the cashier, to convey to the Fulton Bank the twenty-five hundred shares of the Morris Canal stock; or did he know that Mr. Talman, the cashier, had not placed the said stock on the stock ledger of the Morris Canal and Banking Company to the credit of the Fulton Bank?

He answers—I have no knowledge or reason to believe that Mr. Barker knew that Mr. Bayard had signed blank certificates, or that stock certificates were used by Mr. Talman for transferring the stock in question; or that he knew that Mr. Talman had not placed the said stock upon the stock ledger of the Morris Canal, to the credit of the Fulton Bank; Mr. Barker never did, to my knowledge or belief, converse with me, or any other person connected with the Morris Canal and Banking Company, on the subject, nor was there, to my knowledge and belief, any communication made to him by any person whatever on the subject.

Extracts from the Testimony of Matthew L. Davis.

Mr. Davis, sworn on the part of the complainants, and being asked, says, he is now, and has been, Secretary of the Life and Fire Insurance Company, from its first establishment.

Being asked, by Mr. Barker, says, that Jacob Barker was not knowing to the issue of the Life and Fire bonds for $250,000, or for any other sum to the Morris Canal and Banking Company.

James T. Talman, sworn on the part of Mr. Barker, says, he was Cashier of the Morris Canal and Banking Company through the month of May, one thousand eight hundred and twenty-six?

Being asked—Did you issue two certificates in the name of the Fulton Bank, together, for twenty-five hundred shares of stock of said company, on or about the tenth day of May, one thousand eight hundred and twenty-six, in exchange for an equal amount of Life and Fire bonds?

He answers—I did.

Being asked—Did Jacob Barker ever speak to you in relation to such exchange, or take any part in the negotiation therefor?

He answers—He did not.

Being asked—Was or was not Mr. Barker, to your knowledge or belief, acquainted with the fact that such stock did or did not stand on the books of the Morris Canal Company to their credit as full stock when such certificates were issued?

He answers—I do not know that Mr. Barker knew any thing about it, nor have I any reason to believe he did.

Being asked—Did Mr. Barker know that you received Life and Fire bonds for said stock?

He answers—I do not know, nor have I any reason to believe Mr. Barker knew any thing about that transaction at the time it took place.

Being asked—When was this stock transferred to the Fulton Bank?

He answers—Some time in August, one thousand eight hundred and twenty-six.

Being asked—Were there any other certificates for the above number of shares issued by said company while you were Cashier thereof?

He answers—There were not.

Being asked—Did not Joseph G. Swift, Thomas Vermilyea, William P. Rathbone, and Henry Eckford, authorize the making the aforesaid exchange orally?

He answers—Mr. Vermilyea and Mr. Rathbone were the persons who spoke about it, and requested me to do it. They all approved of it shortly after it was done. Mr. Eckford was not in town the day it was effected, but came in a few days afterwards, and approved of it.

Being asked—Was there a written paper from the Finance Committee of the Morris Canal and Banking Company relating to said exchange?

He answers—When Mr. Vermilyea called upon me in relation to this exchange, I required from him the authority of the Finance Committee, of which Mr. Vermilyea was one. A resolution was then drawn up by the Finance Committee, authorizing the Cashier to make loans of the Morris Canal stock, and to take Life and Fire bonds as security for its return. It was a general and unlimited authority, and did not specify any particular quantity of stock; and by virtue of this authority, I, as Cashier, issued the certificates for twenty-five hundred shares of the Morris Canal Company stock, under the direction of the acting member of said Finance Committee, and took Life and Fire bonds as security for the return of said stock.

By Mr. Barker—Was the resolution of the Finance Committee of 10th May, 1826, which you say you considered imperative, drawn up in the hand-writing of Mr. Vermilyea, on a loose sheet of paper, and taken round to the persons who signed it, for their signatures?

He answers—It was in the hand-writing of Mr. Vermilyea, on a sheet of paper, and when brought to me by Mr. Vermilyea, it had the signatures of all except Eckford, Rathbone, and Bayard, who afterwards signed it in my presence. I do not know when the signatures of the others were procured.

Being asked—Was there any meeting of the Directors or of the Fi-

nance Committee of the Morris Canal Company called to consider the subject of the 2500 shares of stock, and of an equal amount of Life and Fire bonds received?

He answers—At the time the stock was issued, I understood from Mr. Vermilyea and Mr. Rathbone, that the loan had been agreed on by some of the Finance Committee, but there was no meeting called to my knowledge. Having required the signatures of the Finance Committee as my authority for issuing the stock, under the direction of Mr. Vermilyea, the acting member of the Finance Committee, I afterwards entered the resolution on the minutes, intending it as the regular act of the Committee, but by mistake recorded it as a meeting of the board.

Being asked—Were these minutes made on the 10th May, 1826, or when?

He answers—I did not record the resolution until after Mr. Eckford's return from Baltimore, as I awaited his signature before recording it; it was entered soon after his return, and I have no doubt before the 6th of June.

Mr. *Gilchrist* being called, on the part of Mr. Barker, and sworn, and being asked by Mr. Barker, stated—That there is no notice in the minutes of the Morris Canal and Banking Company, respecting the exchange of 2,500 shares of stock for the Life and Fire bonds, prior to July 18, 1826, no entry of the same on the books of the Company, except in the margin of the certificate book, in the words following:

356 *The President, Directors, & Co. of the Fulton Bank.*
1250 shares, $125,000
10th *May*, 1826.

357 *The President, Directors, & Co. of the Fulton Bank,*
1250 shares, $125,000
10th *May*, 1826.

That the following is a true copy, from the minute book of the Morris Canal and Banking Company:

"Meeting of the board, 10th May, 1826. Present, Wm. Bayard, Jun. president pro. tem., Joseph G. Swift, Thomas Vermilyea, David B. Ogden, Samuel L. Gouverneur, William P. Rathbone, and Henry Eckford.

"*Resolved*, That the cashier be authorized to make loans of the Morris Canal and Banking Company's stock to the Life and Fire Insurance Company, on their allowing 1-4 of 1 per cent. per month commission, and giving their bonds as security for the same. Adjourned."

It was not entered till afterwards in the transfer book, or stock ledger; was all passed through the books after the 18th July, 1826. The company did not appear, by the stock ledger, to have been the owner, at that time, of more than about 600 shares of its own stock. The Life and Fire bonds received for stock were not entered on the books of the Morris Canal. Witness never heard of them till after the 18th of July, nor of the issue of the stock certificates, except the information he got from seeing the margin of the certificate book. This was a few

days before the 18th of July; then saw it by accident, and did not understand it. The certificate book was not under his inspection, and was seldom seen by him. The transfer book was sent over to him about once in two weeks, sometimes not so often.

William Bayard, sworn on the part of Mr. Barker, and being asked—Was you a Director and President pro tempore of the Morris Canal and Banking Company in May, one thousand eight hundred and twenty-six.

He answers—I was.

Being asked—Did you sign blank certificates of stock of said company, and leave them with the Cashier?

He answers—I left my name in blank, with the understanding that they were to be applied for the receipts of instalments.

Being asked—Were Henry Eckford, Thomas Vermilyea, Joseph G. Swift, and William P. Rathbone, Directors of said Company, and also of the Life and Fire Insurance Company, at that time?

He answers—They were of the Morris Canal Company, and he thinks they were of the Life and Fire Insurance Company.

Being asked—Was there not a paper executed by the Morris Canal Company, authorizing its Cashier to exchange its stock for Life and Fire bonds for a stipulated compensation?

He answers—I really am unable to answer this question. I did execute a paper without particular examination, and cannot state its contents. When this paper was sent to me, I refused to sign it until I saw Mr. Ogden; on the way to Mr. Ogden's office, I saw Gen. Swift, and asked him what was the object of getting Life and Fire bonds. The last place I saw this paper was in court; it was handed to me by the District Attorney, to whom I returned the same, during the late trials for an alleged conspiracy. Says he has no recollection of seeing Mr. Barker in the office of the Morris Canal Company prior to the failure of the Life and Fire Insurance Company, and Mr. Barker then came there by invitation from the Morris Canal Company, to assist in furnishing specie for the Morris Canal Company. Says no circumstance came to his knowledge at the time of the issuing the twenty-five hundred shares of Morris Canal stock, before nor since, to induce him to believe that Mr. Barker took any part therein.

William Bayard, again called by Mr. Barker, and asked—Did you, as President *pro tem.* of the Morris Canal and Banking Company, authorize James T. Talman, Cashier thereof, to sign the certain certificates, in proof before the master, for the exchange of 2500 shares of stock of such company for Life and Fire bonds?

He answers—He did not.

Being asked—Was there any other person acting about that period as President, or President *pro tem.* or assistant President, but yourself?

He answers—There was not.

Being asked—Was the subject of the issuing of that stock brought before the Finance Committee or Board of Directors of that company, prior to the suspension of payment of the Life and Fire Company?

He answers—Never to his knowledge.

Being asked—Did the Board of Directors, the Finance Committee, or yourself, ever release any claim the company may have had, to use a portion of the money to arise from the use of the 2500 shares of Morris Canal?

He answers—I know of no such release because I did not know of the exchange until after the failure of the Life and Fire Insurance Company, nor consequently of any claim.

Being asked—Was you applied to frequently to sign the resolution of 10th May, 1826?

He answers—He was twice or three times; once or twice at his own office, once or more by Rathbone; Gen. Swift told him that the notes for the instalments, if secured by the Morris Canal Company, would not be so easily negotiated as Life and Fire bonds, and for that purpose they were making this operation, as it would be a facility to the company in getting money. This was deponent's inducement for signing the resolution. Mr. Vermilyea was the principal acting man of the Board of Directors of the Morris Canal and Banking Company. He assumed the most active part of their business.

David B. Ogden, sworn on the part of Mr. Barker, and asked by Mr. Barker if he was a Director and member of the Finance Committee of that company through the months of May, June and July, eighteen hundred and twenty-six?

He answers—I was a Director and member of the Finance Committee until after the failure of the Life and Fire Insurance Company; shortly after which the Finance Committee were revoked.

Being asked—Did Jacob Barker, as principal or agent, take any part in the negotiation for the original exchange of the twenty-five hundred shares of Morris Canal stock for Life and Fire bonds; had he any interest therein, or was he, to your knowledge or belief, knowing thereto, until long after the exchange took place?

He answers—Mr. Barker did not, to my knowledge or belief, take any part, as principal or agent, in the negotiation for the exchange of twenty-five hundred shares of Morris Canal and Banking Company's stock for Life and Fire bonds, nor has any thing occurred to induce me to believe that he was knowing to that transaction until long after it took place.

Mark Spencer called by Mr. Barker, and being asked—Did you, or did you not, individually, or in connexion with George W. Brown, in May, one thousand eight hundred and twenty-six, make a contract with Henry Eckford, for the exchange of Fulton Bank stock for Morris Canal stock, you giving two thousand shares of Fulton Bank stock, and receiving from Mr. Eckford, in exchange, twenty-five hundred shares of Morris Canal and Banking Company stock, the same to be re-exchanged in the spring of the year one thousand eight hundred and twenty-seven?

He answers—I did agree to lend, and did lend to Mr. Eckford, in

May, one thousand eight hundred and twenty-six, two thousand shares of Fulton Bank stock, to be returned in March, one thousand eight hundred and twenty-seven, and to receive in lieu thereof certain other stocks, and did receive twenty-five hundred shares of Morris Canal and Banking Company stock.

Being asked—Were or were not said two thousand shares of stock hypothecated to the Fulton Bank, before they were loaned to Mr. Eckford?

He answers—They were so hypothecated, and the consent of the bank was obtained to the arrangement.

Being asked—Was, or was not, the said twenty-five hundred shares of Morris Canal stock hypothecated to the Fulton Bank, (at the same time the two thousand shares were released,) as a collateral security for a debt of an equal amount, for which the said two thousand shares had been hypothecated?

He answers—The twenty-five hundred shares of Morris Canal stock was received as security by the Fulton Bank, for the same sum that was previously secured by the two thousand shares of Fulton stock. The exchanges took place on the tenth day of May, one thousand eight hundred and twenty-six.

Being asked—Was, or was not, the negotiation for the original exchange of the said two thousand shares conducted by Henry Eckford in person?

He answers—It was so, and I knew no other person in the exchange.

Being asked—After having entered into the agreement for said exchange, did, or did not, Henry Eckford, leave New-York for Baltimore, previous to the transfers taking place?

He answers—He did so. The bargain was made on Wednesday or Thursday, the third or fourth day of May. Mr. Eckford left the next Sunday, and the exchanges took place on the Wednesday following.

Being asked—Did you, or did you not, speak to Jacob Barker, or did Jacob Barker speak to you, on the subject of said exchange, until after Mr. Eckford left New-York for Baltimore, as aforesaid?

He answers—Mr. Barker never spoke to witness, nor witness to him, in relation to said exchange, until after Mr. Eckford left New-York for Baltimore, as aforesaid. Says, he, the witness, managed said negotiation entirely on behalf of himself and Mr. George W. Brown, Mr. Brown being in Connecticut at the time of the negotiation, but returned before the exchange was made.

Being asked—Did you, or did you not know, that there was no such stock standing on the books of the Morris Canal and Banking Company, at the time of said exchange, or that certificates had been signed by the president of said company, in blank, and filled up by the cashier of said company, without the knowledge or consent of said president, until the proof came out on the late trials for conspiracy in this city?

He answers—I had no knowledge or suspicion of its being any thing but an ordinary transaction, in the usual way, until some time in the month of August, one thousand eight hundred and twenty-six, and until that time I believed said stock was full stock, and was legally and properly issued. Says, there has no circumstance come to his knowledge

which induces him to believe that Mr. Barker knew more of said stock than he, the witness.

Being examined by Mr. Barker, says, he, the witness, was at the bank when the transfer was made by Vermilyea, of the one thousand shares to Mr. Thurston. William P. Rathbone was at the bank at the time, and ordered said transfer. Mr. Barker was not there. In the course of the day, Rathbone gave witness a receipt for said one thousand shares, dated May the tenth, one thousand eight hundred and twenty-six, which receipt was signed H. Eckford & Co. in the handwriting of said Rathbone—the receipt and signature were in the handwriting of said Rathbone.

Being asked—What has become of said receipt?

He answers—I returned it to Mr. Rathbone, after Mr. Eckford returned from Baltimore, on receiving from him an agreement of Henry Eckford to return said two thousand shares of stock, which agreement was thought to be incomplete, and was returned to Mr. Eckford for alteration, and was never again returned to witness, or to George W. Brown, to the knowledge of witness.

Being asked—Where is the receipt above mentioned?

He answers—I have been informed and believe said receipt was in the hands of Hugh Maxwell, Esq. in January, one thousand eight hundred and twenty-seven.

George W. Brown, sworn on the part of Mr. Barker, and asked—Did Mark Spencer and yourself loan to Henry Eckford, in May, eighteen hundred and twenty-six, two thousand shares of Fulton Bank stock, and receive therefor twenty-five hundred shares of Morris Canal stock, to be returned within a limited period?

He answers—We did. William P. Rathbone called on me, and exhibited a written proposition, in his own hand-writing, (a copy of which was compared with the original, and filed. which I now hold in my hand.) Rathbone made an engagement with me to meet Mr. Eckford, at my house, the next morning, which was on or about the first day of May, eighteen hundred and twenty-six. Mr. Eckford and Mr. Rathbone met me at the time appointed; the aforesaid paper was then exhibited, and was read by, and was agreed to by Mr Eckford; we all then called on Mr. Spencer, and Mr Spencer, after examining the said paper, also agreed thereto. On the evening of the same day, I received a note from Mr. Spencer; when I saw him, he stated that he had seen Mr. Eckford, and he had stated that he could not take said stock, as it would not answer his purpose to raise money thereon; an appointment was made to meet Mr. Eckford at Mr. Vermilyea's house on the subject. I went there and he was gone. I went to the country, and left the business in the hands of Mr. Spencer. I returned in a few days, and found Mr. Spencer had made an arrangement, for the particulars of which I refer to his testimony.

Being asked—Did Mr. Barker take any part, as principal or agent, in the negotiation for the said loan, or exchange of two thousand shares of Fulton Bank stock, or for the twenty-five hundred shares of Morris Canal and Banking Company stock, or in procuring the stock from the

Fulton Bank, or from the Morris Canal and Banking Company, or did you ever confer with, or consult him on the subject?

He answers—Mr. Barker did not take any part in the said negotiation, nor in procuring the stock from the Fulton Bank, or from the Morris Canal and Banking Company, nor was he, to my knowledge, consulted about or knowing to it.

Jacob Clinch, sworn on the part of Mr. Barker, and being asked—Did John M. D. Lawrence and Thomas Vermilyea each transfer to William R. Thurston, president, one thousand shares of Fulton Bank stock, on the tenth day of May, one thousand eight hundred and twenty-six?

He answers—They did.

Being asked—Is the book now produced by you, the regular transfer book of the stock of the Fulton Bank?

He answers—It is, and the transfers therein signed by the said John M. D. Lawrence and Thomas Vermilyea, each signing for the one thousand shares, were duly executed by them.

William P. Rathbone being sworn on the part of Mr. Barker, and asked—Had Mr. Barker any interest in the exchange of the two thousand shares of Morris Canal stock, for the twenty-five hundred shares of Fulton Bank stock, which took place in May, one thousand eight hundred and twenty-six?

He answers—None that I know of, except his commissions which might grow out of selling, buying, and hypothecating the Fulton Bank stock.

Being asked—Was not the exchange above spoken of, made expressly for the accommodation of the Life and Fire Insurance Company?

He answers—I so understood it.

Being asked—Did you apply to Mr. Barker for advice and assistance in the business by the direction of Mr. Eckford?

He answers—Mr Eckford directed, when he left town, about the seventh of May, one thousand eight hundred and twenty-six, that the Fulton Bank stock, which he had previously agreed for, should be placed in the hands of Mr. Barker when received; and I therefore applied to him as aforesaid, and delivered into his hands the aforesaid two thousand shares of Fulton Bank stock, transferred to Mr. Thurston, by the order of Mr. Barker.

Being asked—Did Mr. Barker know any thing about the informalities of the issuing of the certificates for the 2500 shares of Morris Canal stock to the Fulton Bank?

He answers—I knew of no irregularities in the issuing of that stock, nor do I know of any facts which induce me to believe that Mr. Barker knew of any irregularities or informality.

Being asked—Had Mr. Barker, to your knowledge, any thing to do with the issuing of the 2500 shares of Morris Canal stock as principal or agent?

He answers—Not to my knowledge.

Being asked—Did Mr. Barker, to your knowledge, know that the Life and Fire bonds had been given for the Morris Canal stock until after the same had taken place?

He answers—Not to my knowledge.

Being asked—Did you or not, as a Director of the Life and Fire Insurance Company, in common with the Officers and Directors of that company, or such of them as were then acting, authorize the issuing of bonds of that company to the amount of $250,000, in exchange for an equal amount of Morris Canal stock, as a temporary loan for the accommodation of the Life and Fire?

He answers—I was not present when it was done, but knew it was to be done, and approved of it, and after it was done sanctioned it.

Being asked—Did you not, as a Director of the Morris Canal and Banking Company, sign a resolution, in common with other Directors, authorizing the issuing of stock of that company in exchange for Life and Fire bonds, with express reference to the said $250,000 of stock; and if any, what other security was understood to be given for its return?

He answers—I did, except it was uncertain whether the stock would be wanted to the amount of one hundred and fifty or two hundred and fifty thousand dollars at the time I signed that resolution; and it was my understanding that Henry Eckford, Esq. was to guarantee the return of the Morris Canal stock, by which return the said bonds would be cancelled and returned to the Life and Fire Insurance Company.

Being asked—Did you apply to Mr. Barker, in the absence of Mr. Eckford, for advice, in relation to the phraseology of a contract or guaranty, touching the exchange or return of said stock, and when?

He answers—According to my recollection, I called on Mr. Barker on the morning of the tenth of May, one thousand eight hundred and twenty-six, and asked him to look at a paper which *I had previously drawn* at the office of the Life and Fire Insurance Company, and to see if it sufficiently explained the object it professed. Mr. Barker looked over it, and remarked it was a large amount, was the guaranty of Mr. Eckford, who was absent, and that a single word might make a variation in its import, and suggested that a clause be added, allowing Mr. Eckford to return the stock in parcels, as might suit the convenience of Mr. Eckford. As it was then drawn, Mr. Barker stated, Mr. Eckford would be obliged to return the whole stock together. Mr. Barker wrote such clause at the bottom or on the back of said paper, and I took said paper away. Witness says, he heard said paper read by Mr. Maxwell, the District Attorney, on the late conspiracy trials.

Remarks on the preceding testimony will be reserved for my next letter.

JACOB BARKER.

LETTER II.

I CLOSED my last letter with the testimony of William P. Rathbone, who, under the solemnity of an oath, says that he applied to me for advice, in business in which I had no interest, and that I made a memorandum of a suggestion on a paper drawn by himself before he called on me, which memorandum he took away from my office, and afterwards heard it read in court, by the District Attorney, as evidence of my being one of the original parties to the transaction. I did not press my inquiry by whom, nor for what object they were delivered. I knew who was first indicted, and I also knew who were on trial, as well as who the real parties were, and who took the paper from my office, which superseded the necessity of all further inquiry on my part. The production and use by the District Attorney of this, among other papers, denominated the Rathbone papers, made too deep an impression on the public mind, and created a sensation too great to be soon forgotten. The paper represented to be the important one among them, was the aforesaid contract, in the hand-writing of William P. Rathbone, between Mark Spencer and George W. Brown on the one part, and William P. Rathbone, in behalf of Henry Eckford, on the other part, for the temporary loan of 2000 shares of Fulton Bank stock, in exchange for 2500 shares Morris Canal stock, in words following:

"Whereas Mark Spencer and George W. Brown have this day loaned me two thousand shares of Fulton Bank stock, for which I have loaned them two thousand five hundred shares of Morris Canal stock: Now this agreement witnesseth, that I, Henry Eckford, do hereby obligate and bind myself to return said Fulton stock to said Spencer and Brown, on or before the first day of March next, they returning to me, *at the time or times I return them*, the Morris Canal and Banking Company stock, viz.—I have received the Fulton Stock at par, and loaned the Morris Canal and Banking Company at eighty per cent. and as it is only a temporary exchange, it is to be returned at the rate as delivered and received. And said Spencer and Brown hereby obligate and bind themselves to deliver to me said Morris Canal and Banking Company stock whenever I shall deliver the Fulton Bank stock at the same rate as above stated. For H. E.

"New-York, May 10, 1826. W. P. R."

On the back of the preceding were the following endorsements: "And said bank to agree, as said Eckford shall deliver said Fulton Bank stock to transfer to him the Morris Canal and Banking Company stock at the same rate as hypothecated to them,

"as fast, and in such proportions, as I shall deliver the Fulton Bank stock."

This paper the reader will notice was signed, "For H. E.—W. P. R." It was brought to my office by William P. Rathbone before the said

memorandum was written on it, as he himself testifies, who, in behalf of Mr. Eckford, asked my friendly advice as to its phraseology. On reading it, it appeared to me that it might incommode Mr. Eckford to have to deliver the whole 2000 shares of stock at one time; to obviate which I suggested that a clause should be added, which, at the request of Rathbone, I wrote at the foot of the said agreement in words following—"As fast and in such proportions as I deliver the Fulton Bank stock."

This memorandum was intended to be incorporated in the body of the contract, in place of the word, viz. Rathbone took away the rough draft, and I never again saw it until it was produced on the conspiracy trials to make me answerable for the conduct of others. The District Attorney stated to the jury, that I was a party to this contract, and that this memorandum was intended to be separate and distinct from the original contract, and to bind a third party, and that Jacob Barker was that third party. The memorandum being written in the singular, I, the District Attorney, for the purpose of giving his false position a plausible appearance, read the contract in the plural, we, Henry Eckford and William P. Rathbone, in place of reading it according to the truth of the paper, which he held in his hand at the time—I, meaning, I, Henry Eckford, &c.

I knew these papers afforded no evidence of wrong committed by me—properly understood, they could not. Yet it cannot be denied, that the improper use, the forced and unwarrantable construction of these papers, did, at a time of great excitement and suspicion, place me in a most melancholy and dangerous position.

The wisdom of the advice given, together with the knowledge that it was given in kindness, without fee or reward, at the solicitation of the parties themselves, by a disinterested friend, should, under all circumstances, have protected me from such an outrage on every thing held sacred by honourable men, but it did not.

In confirmation of Mr. Rathbone's testimony, I submit a letter from Mr. Eckford, in words following:

New-York, 7th May, 1826.

Dear Sir,

In consequence of advice from Baltimore, it became necessary for me to go on to-day. Have the goodness to send me, by to-day's mail, the papers you talked of. It will be 12 o'clock to-morrow before I leave Philadelphia. You will have the goodness to give such aid as you can in completing the arrangement with Mr. Spencer.

Your friend,

H. ECKFORD.

Jacob Barker, Esq.

Directed, *Jacob Barker*, Esq.

Present.

A true Copy,

R. HATFIELD.

This letter, I beg the reader to recollect, was never produced on the conspiracy trials, although on the two first trials it was in my possession; if it had been produced it would have warded off the blow, or at least have placed the responsibility of the transaction on others.

On the last trial I was deprived of all opportunity of using it, by the illegal and improper conduct of the District Attorney, in getting possession of, and refusing to produce it. No such cause operated on the other trials, and it must be manifest to all that, however unkindly I had been treated by some of the other persons accused, as to one of them at least I preferred to risk every thing, rather than hazard the cause of a co-defendant, or the letter would have been produced.

"You will have the goodness to give such aid as you can in completing the arrangements with Mr. Spencer," says Mr. Eckford in this letter. I ask the reader to refer to the testimony of Brown, Spencer, Vermilyea, and Rathbone, all of whom agree that the arrangement was simply the exchange of one description of public stock, for another description of public stock, the ordinary and daily transaction of Wall-street, honourable in itself, and such as no man, who regards his own reputation, will attempt to impugn. The manner of procuring the stock, and whether the papers which passed between the parties were worthy the name of public stock, are very different questions. The arrangement was for full stock. I never saw the certificates of the Morris Canal and Banking Company stock; nor did I take any part in relation to the Fulton Bank stock, until after it had been transferred, and regular certificates from the Fulton Bank furnished by Rathbone; and was I, on the receipt of the letter from Mr. Eckford, and on the personal application of his partner, to presume there had been fraud practised by such men in procuring it? It is enough for my purpose that I had no interest, as principal or agent, in procuring either the Fulton Bank stock, or the Morris Canal and Banking Company stock; and that I knew nothing about how it was procured or paid for, as all the witnesses have testified.

When the District Attorney was compelled, by the power of the Court of Chancery, to restore the letters from Mr. Eckford, of which I had been arbitrarily and unlawfully deprived, and which, when required to produce them on the trial, "he said he had them not when he had them;" he produced seven letters, though he had taken only six. The seventh was not addressed to me, nor had I ever seen it. Whether he got this letter with the Rathbone papers or not, remains to be explained. It has on it an endorsement in the hand-writing of the counsel of Mr. Eckford, and the rupture between him and the public prosecutor may be the means of unfolding the mystery. Had Mr. Eckford put himself on the purity of his intentions, and the legality of the transactions complained of, he might, with great propriety, have pressed the District Attorney to have given him a full acknowledgment in writing; but as the District Attorney only undertook to say that "Mr. Eckford had been the victim of others," which declaration Mr. Eckford, under his own signature, places before the world without denying its truth, it cannot but be considered strange that, with a full knowledge of the facts which have since been testified to by all the witnesses, he

should have come to an open rupture with the District Attorney, after the District Attorney had graciously promised to restore him to society by word of mouth, although he refused to do it in writing. It seems still more strange that the District Attorney should not have surrendered at discretion, after having accepted of three hundred dollars from Mr. Eckford, and money from several others of the "indicted, but untried and unacquitted individuals." I repeat, that it seems strange that he should not, when thus contaminated, and after "herding" with these men, at Josiah Hedden's, and there "holding his midnight caucus," have surrendered at discretion, and given the required certificate. The only solution I can give to such strange mysteries, is, that they each relied on the supposition that the other would not, under any circumstances, give publicity to the transaction. But here the District Attorney was out-generaled, as the public do not consider it evidence of cowardice or bribery on the part of an unarmed traveller to give his purse to save his life, when the pistol of the highwayman is at his breast. And here let me ask the reader to consider the testimony, and remember that the District Attorney was in possession of the Morris Canal books, the Life and Fire Company books, and the Tradesmen's Bank books; also, that he knew all the material facts when he abandoned the pursuit of nearly all the principal actors, and devoted the utmost energy of his mind to my destruction; and that while all these things were going on, and the District Attorney lining his pockets with gold from individual contributions, he had the address to induce the public authorities to increase his salary one thousand dollars per annum; and what is still more strange, they keep him in office, since the impostor is unmasked.

Having disposed of the exchange of Morris Canal stock for Fulton stock, I now proceed to the next important charge made against me, namely, that I was concerned as principal or agent in the purchase of the Tradesmen's Bank, the change of its Directors, and the subsequent mismanagement of its affairs. The proofs on this point are equally triumphant as the others.

William P. Rathbone being sworn, and asked—Had Mr. Barker any interest in, knowledge of, or agency about. the purchase of four or five thousand shares of Tradesmen's Bank stock, in the summer of one thousand eight hundred and twenty-six, which was transferred to your name?

He answers—None that I know of.

Being asked—Was Mr. Barker ever consulted as to the selection or appointment of new directors of said bank, which took place about that time?

He answers—I never heard that he was, nor do I believe that he was.

Did you transfer eight hundred shares of Tradesmen's Bank stock to Seth Sturtevant, on or about the twelfth day of July, one thousand eight hundred and twenty-six?

He answers—I did.

Being asked—Was it done at the request of Mr. Eckford ?

He answers—It was.

Being asked—Was that request made to you in the office of the Life and Fire Insurance Company ?

He answers—I believe it was on the way from the office of the Life and Fire to the ship-yard, we walking together. Mr. Eckford knew that the Tradesmen's Bank had in their possession a Life and Fire bond for two hundred and sixty thousand dollars. Mr. Eckford wished me to inquire whether some of that stock could be borrowed for a few days; that, if it could it would accommodate Mr. Barker in some arrangements or negotiations, which he (Mr. Barker, as witness understood Mr. Eckford,) was then making, or about making.

Being asked—Did you deliver to Mr. Barker certificates, in the name of Seth Sturtevant, for the said eight hundred shares of stock ?

He answers—I did, by the request of Henry Eckford.

Being asked—Did you ever have any conversation with Mr. Barker, in relation to said stock, prior to the delivery of said certificates ?

He answers—Not one word.

Being asked—Did you apply to Mr. Barker to return the said eight hundred shares of Tradesmen's Bank stock, shortly after you delivered it to him, and before the failure of the Life and Fire Insurance Company ?

He answers—I did.

Being asked—What answer did Mr. Barker make when you applied to him for the return of said eight hundred shares of stock ?

(*Question objected to, by Mr. Hoffman, and overruled.*)

Being asked—Did not Mr. Barker refuse to return said stock until he got other security, in lieu thereof, from the Life and Fire Insurance Company ?

He answers—I cannot be certain whether he mentioned getting security from the Life and Fire Insurance Company or not. Mr. Barker stated that he had borrowed money on that stock for the use of the Life and Fire Insurance Company, and would not give it up until he had got other security.

Being asked—Did Mr. Barker ever object to seeing Mr. Gouverneur, in relation to the return of the eight hundred shares of bank stock ?

He answers—No, not to my knowledge ; on the contrary, he appeared anxious to see him, for the purpose of settling some other stock transactions with him, for which Mr. Barker alleged he had a claim on Mr. Gouverneur. This, I believe, I communicated to Mr. Gouverneur, but Mr. Gouverneur declined having any other business connected therewith ; observing, that he looked to me for the settlement of this business, and should not call upon Mr. Barker. Mr. Gouverneur must have been mistaken, if he said that I told him that Mr. Barker objected to seeing him on this subject. I was opposed to Mr. Gouverneur seeing Mr. Barker in relation to connecting any other stock transaction with the said eight hundred shares, and this must have led Mr. Gouverneur into the mistake.

Matthew Reed, sworn on the part of Mr. Barker, and being asked—Was you president of the Tradesmen's Bank, in June and July, one thousand eight hundred and twenty-six?

He answers—He was then, and for more than a year previous.

Being asked—Was William P. Rathbone elected a director of the Tradesmen's Bank, on the third of July, one thousand eight hundred and twenty-six?

He answers—He was.

Being asked—Were you both directors of the Life and Fire Insurance Company?

He answers—Witness thinks he was, and he believes William P. Rathbone was, during June and July, one thousand eight hundred and twenty-six, but he never met him there.

Being asked—Were rising four thousand shares of Tradesmen's Bank stock transferred to William P. Rathbone, in July, one thousand eight hundred and twenty six?

He answers—There were.

Being asked—Did William P. Rathbone become indebted to said bank, for a corresponding amount, at the same time?

He answers—A loan was agreed to be given him for a corresponding amount, at the same time, estimating the stock at par.

Being asked—Was not a Life and Fire bond received, for about two hundred and sixty thousand dollars, by said bank, as collateral security for such indebtedness, by said Rathbone?

He answers—There was a bond received, which, he thinks, was for two hundred and sixty-two thousand dollars, in addition to which, rising four thousand shares of Tradesmen's Bank stock stood in Rathbone's name, which it was agreed between the committee of the bank, of which witness was one, and Rathbone, should not be transferred.

Being asked—Was Rathbone's account settled by Gouverneur with the bank, and was all the stock which had been transferred to Rathbone, delivered to the bank?

He answers—The account was so settled, and the stock so delivered.

Being asked—Did the stock so delivered to the bank embrace eight hundred shares which had been transferred by Rathbone to Seth Sturtevant?

He answers—It did.

Being asked—Did you make the bargain for the sale of the whole of the stock transferred to Rathbone?

He answers—He did.

Being asked—With whom?

He answers—With Mr. M. L. Davis, as agent, as he (Davis) said, and not himself (Davis) interested a shilling.

Being asked—Did he tell you for whom he made such purchase?

He answers—He did not in distinct terms, but he gave him to understand, and in such manner that Mr. Davis could not but have known at the time the impression made on witness' mind, which was, that Davis had been acting in the business as agent of Mr. Eckford. His reasons for thinking so were, that Mr. Davis previously informed him he had consulted with Mr. Eckford relative to said purchase, and

that about the time of concluding the purchase, Mr. Davis told witness he had to consult two persons, who were all that knew of the negotiation for the purchase, except Mr. Davis. Witness then asked Mr. Davis, who those persons were? to which Mr. Davis replied, one is William P. Rathbone, and hesitated about naming the other, when witness said the other must be Mr. Eckford; and witness said so because Davis had previously told him that he had consulted Mr. Eckford. Upon witness naming Mr. Eckford, Mr. Davis smiled, and confirmed the impression upon witness' mind, that he was acting for Mr. Eckford.

Being asked—Did Mr. Davis enjoin upon you not to let Mr. Barker know any thing about the purchase of the said bank?

He answers—He enjoined him not to let any one know about it, but did not mention Mr. Barker in particular, further than saying Mr. Barker knew nothing about it.

Being asked—Did you ever have any conversation with Mr. Barker relative to the purchase or sale of said bank stock?

He answers—Never.

Being asked—Did Josiah Hedden call upon you to obtain a contract for the purchase of the Tradesmen's Bank, after the recent indictments for alleged conspiracy?

He answers—He did.

Being asked—Did not Mr. Hedden tell you, that if Mr. Barker could be convicted, Mr. Maxwell would be satisfied, and all the rest would be let off.

Witness answers—He did tell him so, but it was at a previous conversation to the one in which he applied for a contract.

Being asked—Did you not reply to Mr. Hedden, that you would not give up the contract to be used against Mr. Barker, without being called on the stand as a witness, where you could explain it, and how it came to your hands, and, by the God that made you, Barker had nothing to do with it?

He answers—That he held such conversation applicable to a paper in witness' possession, which Hedden alleged that he knew witness was in possession of, which paper purported to be a contract for the purchase and sale of the aforesaid stock of the Tradesmen's Bank, but which had not been executed by witness; and told Mr. Hedden, that I would not part with it to be used to the prejudice of Mr. Barker, excepting I was called as a witness to explain how it came into my hands. Mr. Davis told me that Mr. Barker knew nothing about the purchase of the bank, and by the God that made me, it shall never be used, without an explanation, to the injury of Mr. Barker.

Being asked—Did you not afterwards meet Mr. Maxwell at Hedden's house?

Witness answers—He did meet him there, but he does not know whether it was before or after the aforesaid application by Mr. Hedden.

Being asked—Did Mr. Maxwell say to you at that time, that he considered you innocent of the charges made against you in relation to the Tradesmen's Bank?

He answers—Mr. Maxwell said he was perfectly satisfied with witness'

conduct in relation to the Tradesmen's Bank, and that he should discharge the indictment; witness says it was in the presence of Mrs. Hedden.

Being asked—Did the said paper for which Hedden applied mention Mr. Barker's name, or any thing to lead you to suppose that he, Barker, had any thing to do with the purchase of the said stock in the Tradesmen's Bank?

He answers—It did not.

Being asked—How much did the premium amount to on the stock contracted for with Mr. Davis?

He answers—About eighty-four thousand dollars, from which was to be deducted the dividend about to be declared of four per cent., which left a balance of seventy-two thousand dollars, of which witness received from Mr. Davis thirty-one thousand dollars in cash, and forty-one thousand dollars in Life and Fire bonds, which is the exact amount as witness believes, but he may be mistaken to a small amount.

Cross-examined by Mr. Hoffman. Being asked—What was the object of the transfer of the eight hundred shares of Tradesmen's Bank stock spoken of by you in your direct examination, as having been made by W. P. Rathbone to Seth Sturtevant?

He answers—Mr. Rathbone called on me the evening previous to the transfer, for three hundred shares of the Tradesmen's stock, for which he promised to send security. The object he stated to be, to procure a loan of fifteen thousand dollars on the stock, for the purpose of loaning the money to the Hudson Insurance Company. He further stated that Mr. Barker had loaned the Hudson Insurance Company seven thousand dollars, and Mr. Eckford six thousand dollars. Mr. Rathbone stated they could raise the money on this stock sooner than on any securities they had, and that said amount would carry the Hudson Insurance Company through their difficulties.

Mr. *S. Cox* sworn, on the part of Mr. Barker, and being asked—Was you cashier of the Tradesmen's Bank on the twelfth day of July, one thousand eight hundred and twenty-six?

He answers—He was.

Being asked—Was William P. Rathbone a director at that time?

He answers—He thinks he was about that time; and he thinks he resigned on the 14th day of that month.

Being asked—Did Mr. Rathbone transfer to Seth Sturtevant, on or about the twelfth day of July, one thousand eight hundred and twenty-six, eight hundred shares of Tradesmen's Bank stock?

He answers—He did.

Being asked—Did Mr. Rathbone leave with the Tradesmen's Bank, or some of its officers, a Life and Fire Bond, to the amount of two hundred and sixty-two thousand dollars, or some other large sum, as a collateral security, in place of a large amount of Tradesmen's Bank stock transferred to him, of which these eight hundred shares were a part?

He answers—There was a Life and Fire bond left in the Bank for two hundred and sixty thousand dollars, about a week previous to such

transfer, but by whom he does not know, and was handed to him by Matthew Reed, President, unaccompanied by any explanation.

Being asked—Was Samuel L. Gouverneur a director of said bank, at the period aforesaid?

He answers—He was.

Being asked—Did he, Gouverneur, present to the directors of said bank, a certificate for three hundred of the said eight hundred shares, accompanied with a power of attorney, executed by the said Seth Sturtevant, to transfer the same, and also a contract from Jacob Barker for the delivery of five hundred shares in addition?

He answers—The three hundred shares were returned to the bank; but whether the certificate and power of attorney were brought by Mr. Gouverneur, he does not know. Says he heard Mr. Gouverneur, at the bank, a few days after the stock was transferred by Mr. Rathbone to Sturtevant, say, that he held Mr. Barker's contract to deliver five hundred shares of Tradesmen's Bank stock.

Being asked—Did you understand Mr. Gouverneur to be acting in behalf of the bank, in relation to getting the eight hundred shares back?

He answers—I certainly did; it was so reported to me by the president of the bank at the time, and I heard Mr. Gouverneur express much solicitude to have the stock returned to the bank. Mr. Gouverneur did act in the business as an agent for the bank, and the whole eight hundred shares were returned.

Being asked—Did you not surrender to the Life and Fire Insurance Company, or to one, and which of its officers, the aforesaid bond for two hundred and sixty thousand dollars, in consequence of the said eight hundred shares being returned, the other stock which had been transferred to Rathbone having been transferred by him to Gouverneur in trust for the bank?

He answers—I returned the Life and Fire bond aforesaid, handed to me by Mr. Reed, the president, agreeably to the advice of the counsel of the bank, Messrs. J. O. Hoffman and David B. Ogden, and the recommendation of Mr. Riker, a director of said bank, to the secretary of the Life and Fire Insurance Company.

Being asked—Had Mr. Barker, directly or indirectly, to your knowledge or belief, any interest in, or agency about, the purchase or sale of the Tradesmen's Bank, in June or July, one thousand eight hundred and twenty-six, or at any other time?

He answers—Mr. Barker had not to my knowledge, nor do I believe he had, any interest in, or agency about, the purchase or sale of the Tradesmen's Bank, nor did I ever hear Mr. Barker say any thing on the subject until four or five days after the injunction; and Mr. Barker always disavowed any participation in the said transaction.

Matthew L. Davis being sworn on the part of the complainants, and asked—Do you or do you not know whether William P. Rathbone, on or about the time of the appointment of Mr. Cox as Cashier of the Tradesmen's Bank, was the owner or holder of a large number of shares of the stock of said bank?

He answered—I decline answering this question, as it may jeopardize

my interest, important suits being about commencing, &c. but refer to the books of the Company.

Being asked—Was the Life and Fire Insurance Company, either directly or indirectly, interested in the stock of the Tradesmen's Bank at the period referred to?

He answers—Not to my knowledge.

Being asked—Were any portion of the funds of the Life and Fire Company, or any obligation or obligations entered into by the Life and Fire Company, appropriated or used for the purpose of purchasing the stock of said bank at the period above referred to, or for the purpose of procuring to be issued or transferred any portion of said stock?

He answers—I decline answering this question, and all other questions in regard to the purchase of the stock above alluded to, for the reasons already assigned; and I decline as to the names of all parties said to have been concerned in the transaction above alluded to, least answering as to others might endanger my rights, legal questions now depending, and suits being about to be commenced. I am implicated with the Tradesmen's Bank to the amount of twenty thousand dollars for account of the Life and Fire Insurance Company, arising out of the following transaction: A short time previous to the failure of the Life and Fire Company, and some time between the first and fifteenth day of July, of the year one thousand eight hundred and twenty-six, as I believe, I procured from the Tradesmen's Bank two discounts of ten thousand dollars each, and gave my own notes, payable to the cashier, with interest, at sixty days. I deposited, as collateral security for the payment of said two notes, two Life and Fire bonds of ten thousand dollars each, issued for that purpose by order of the President of the Life and Fire Company; and I delivered to Mr. Kingsland, a clerk in the office of the Life and Fire Company, orders on the Tradesmen's Bank for the amount of twenty thousand dollars, which twenty thousand dollars he received and deposited in the Fulton Bank, to the credit of the Life and Fire Company. Says the above loan of the twenty thousand dollars from the Tradesmen's Bank, was made with the knowledge and approbation of the directors of the Life and Fire Company, viz. Mr. Eckford, Mr. Vermilyea, and Mr. Rathbone. Mr. Reed, who was President of the Tradesmen's Bank, was a director of the Life and Fire Company, and must have known it. He also says he has not any knowledge of Mr. Barker's being concerned in any way whatever in said loan, or interested therein, or of his having any knowledge thereof.

Being asked—What security was given to the Life and Fire Company for the Life and Fire bonds, which were given to the Tradesmen's Bank as collateral security?

He answers—None.

Being asked—Who authorized the issuing of said bonds?

He answers—The President and the other Directors, he believes.

Being asked—Did they know for what purpose said bonds were to be issued?

He answers—They did.

Being asked—By whose direction did you issue, about the month of June or July, one thousand eight hundred and twenty-six, a Life and

Fire bond for two hundred and sixty-two thousand dollars, or thereabouts, to the Tradesmen's Bank?

He answers—That the bond alluded to by the above question is alleged to have been connected with the purchase of that bank, and I decline answering the question further. But by this I do not mean to admit that the said bond was issued by me.

Being asked—What security did the Life and Fire Company receive for the said bond?

He answers—For the reasons already assigned, I decline answering further in relation to said bond, and refer to the books of said Company.

The books being referred to, the only entry found was in the margin of the bond book. It was in the words following:

5005 M. L. D.
to be accounted for
Temporary loan $260,000
Tradesm's Bk. 4880 shares
in name W. P. R.
Stock to be ret'd. in a few days
and Bond surrendered.
Cancelled and destroyed.

(It will hereafter be seen that Mr. Vermilyea swears that the Life and Fire Company made no new loans of their bonds, to any extent, after November, 1825. If the purchase of the Tradesmen's Bank was not for account of the Life and Fire, then this bond was a loan, and I should think the amount would entitle it to be considered of some extent. W. P. R. means, that the stock was transferred to William P. Rathbone; and he has sworn, as the reader will remember, that he had no interest in the purchase, and consequently the bond was not loaned to him. To whom it was loaned, if it was loaned, does not appear by any of the testimony taken; and since Mr. Vermilyea has positively sworn that there were no loans, to any extent, made after November, 1825, and the same has been frequently stated by Mr. Davis, the Clerks, and the Directors of the Company, it could scarcely be believed that this 260,000 dollars had been loaned in the month of June or July of that year, only two or three weeks before the failure, if the margin of the bond book had not exhibited that fact, and Mr. Davis had not sworn that the Life and Fire Company were not, directly or indirectly, concerned in the purchase of the Tradesmen's Bank.)

Mr. Davis being further asked—Whether Mr. Barker was in any way engaged, consulted, concerned, or interested, in or relative to, the said purchase of any part of the Tradesmen's Bank stock?

He declines answering that question, because important suits are about to be commenced, and the answering of this question might affect his legal rights.

Thomas Vermilyea, being asked—Were you the purchaser of the Tradesmen's Bank, or a large amount of the stock thereof, transferred to William P. Rathbone in June or July, eighteen hundred and twenty-six: if not, do you know who was, or who made any portion of the

advance, either in money or otherwise, to purchase said Bank, or said stock, and to whom was said advance made?

He answers—I was not the purchaser of the Tradesmen's Bank, or any part of the stock transferred to William P. Rathbone in June or July, eighteen hundred and twenty-six, but I do know who was; I do know how the advances were made, and by whom made, but I decline to answer any further on these points.

(*The Master rules he is bound to answer.*)

Being asked—Was Mr. Barker interested, either as principal or agent, in the purchase of the Tradesmen's Bank, or of the stock, transferred to William P. Rathbone in June or July, eighteen hundred and twenty-six?

Mr. Vermilyea declines to answer these interrogatories. The Master rules as above. Mr. Vermilyea continues to decline.

Mr. Davis and Mr. Vermilyea having refused to answer the questions touching the purchase of the Tradesmen's Bank, Mr. Halleck was called, and being asked—Did you, or did you not, read a paper drawn up by Mr. Barker, setting forth, among other things, that he had no knowledge of, nor interest in, the purchase of the Tradesmen's Bank, and did he not, in your presence, present the same to Matthew L. Davis and Thomas Vermilyea, and request them to sign and swear to it, to be used before the Supreme Court for the purpose of procuring a new trial?

He answers—That Mr. Barker did, in my presence, present such a paper to Mr. Davis, who, after reading it, said, "it is all true, so help me God; but I will not swear to it, because, in consequence of my recent conviction, my oath will not avail." Mr. Vermilyea also read it, said it was all true, but whether he signed it, or swore to it, or not, I do not know.

The Master rules that this testimony was not pertinent to the cause at issue in the Court of Chancery, and therefore not put on his minutes. Mr. Davis continued to refuse to answer; but Mr. Vermilyea came forward and voluntarily offered the following answer to the last question, to wit: Mr. Barker was not, to the best of my knowledge and belief, interested in the purchase of the Tradesmen's Bank, or the stock thereof, either as principal or agent; nor did he advance the money, or any part thereof, wherewith the same was purchased or paid for.

Being asked—Had Mr. Barker any knowledge of the issuing of the Life and Fire bond for two hundred and sixty thousand dollars to the Tradesmen's Bank, and was the said bond in the usual way, or how otherwise?

He answers—I know of nothing which could lead me into a belief that Mr. Barker had any thing to do with the issuing of that bond, or any knowledge of the issuing thereof. It was issued in the usual way that Life and Fire bonds were issued. That transaction was with the approbation of Mr. Eckford, the President of the Life and Fire Insurance Company.

A few days after giving this testimony, Mr. Vermilyea appeared and requested the Master to make the following entry on his books:

"That when he says the $260.000 Life and Fire bond was issued

with the approbation of the President of said Company, he wishes to be understood as saying he supposed it was issued with the President's approbation."

Remarks on the cruelty of these men in endeavouring to involve me in suspicions in relation to the Tradesmen's Bank, are reserved for my next letter.

JACOB BARKER.

LETTER III.

The testimony detailed in my last letter, in relation to the Tradesmen's Bank, is so full and conclusive, that all remarks by me would be superfluous. I do not know how the parties concerned therein can justify their various attempts to subject me to the suspicion of having been concerned in that affair. The plea urged by one of the individuals for refusing his affidavit, at the moment when it might have been of the utmost service to me, cannot be considered much short of an overt act of hostility, and can only be reconciled on the principle of "save himself who can."

It should always be remembered, that the District Attorney entered a nolle prosequi in favour of Mr. Talman, the cashier of the Morris Canal Company, who filled up the blank certificates for the twenty-five hundred shares of Morris Canal stock, who omitted to place them on the stock ledger, and to transfer them to the Fulton Bank, and who kept the minutes of the Morris Canal Company—that he declared Rathbone to be regenerated—that he entered a nolle prosequi in favour of Mr. Gouverneur, one of the signers of the famous Morris resolution of the 10th May, and one of the principal actors in the Tradesmen's Bank affair—that he subjected General Swift to only the form of a trial—that he declared himself "perfectly satisfied with the conduct of Mr. Reed," who sold that bank to Matthew L. Davis, and who conducted its business for the new dynasty, adding, that he should discharge the "indictment against him;" and that, according to the testimony of Mr. Reed, if the District Attorney could get Barker convicted, he would be satisfied—also, that others of the indicted had been let off without the forms even of a trial; while many, although indicted a month before Mr. Barker, were laid aside for a more acceptable sacrifice.

Another charge which the District Attorney made against me was, of being accessary to the great losses sustained by the Fulton Bank in its dealings with Mark Spencer and George W. Brown and the Hudson Insurance Company, together with the disastrous business of the latter company. That there was, also, not the least foundation for this part of his unholy accusations against me, will be seen by the following testimony.

Mark Spencer being sworn, and asked by Mr. Barker—Did the losses sustained by the Fulton Bank, in its dealings with Mark Spencer, George W. Brown, and the Hudson Insurance Company, arise from stock notes discounted by the board of directors, and checks paid by order of David Leavitt, the president of that bank, and was Jacob Barker consulted, or a party thereto, or did he ever, to your knowledge, approbate such discounts and overdrawings?

He answers—The losses inquired about did principally arise from stock notes discounted by the board of directors, and the payment of checks, drawn and paid pursuant to an arrangement made with David Leavitt, the president of the bank, who agreed to lend the money upon the checks for a stipulated time, and before the checks were charged under that arrangement, collateral security was given to David Leavitt, the president, for the same, and the interest also paid, in cash, to him upon the whole sum thus borrowed. This sum, thus borrowed, was afterwards called overdrawing, and amounted to about one hundred and twenty-two thousand dollars; but with all this Mr. Barker had nothing to do, to my knowledge or belief; nor was he consulted about, or acquainted with these transactions, when they took place.

George W. Brown, being sworn on the part of Mr. Barker, and asked—Did you ever confer with or consult Mr. Barker, in relation to the business of the Fulton Bank, or the Hudson Insurance Company?

He answers—I never did confer or advise with Mr. Barker, in relation to the business of the Fulton Bank, or of the Hudson Insurance Company, with the exception of his applying to me and other directors of the Fulton Bank, to resign our seats, as directors of said bank, about the time of its difficulties, in July, eighteen hundred and twenty-six, in consequence of which application we did resign.

My connexion with the Life and Fire Company remains to be explained. It was, as the reader will hereafter see, confined to supplying them with money. For the purpose of showing that this was praiseworthy, I ask the favour of the perusal of the following opinion delivered by Lord Mansfield, in the case of *Foxcroft* v. *Devonshire*, Burrows' Reports, vol. ii. page 931:

"The richest man in trade may be ruined, while his effects are abroad, and not in his own power to answer immediate demands upon him; (which was the case of the Woodwards, who could not save themselves from failing, though they had sufficient to pay 30s. in the pound.) But the factor may actually save him by his assistance, till they come home; and yet the factor himself runs a great risk, and trusts to a precarious security. For the goods may in fact be consigned originally to another; or the consignment to him may be countermanded; they may be sold; they may be mortgaged, or burnt, or lost, and never come into his possession, so as to give him any lien; and it appears by the letters that have been read, that in this very case, Satterthwaite unworthily made over to other persons part of the goods to which the defendants had trusted for their security.

"A mortgage of ships abroad, or of cargoes upon the high seas, by a

trader, to any body, is good, notwithstanding the clause in 21 Jac. 1. c. 19, though possession has not been actually delivered: for a bill of sale is all the possession that can be delivered till the ship comes home.

"There scarce happens a bankruptcy in which it does not appear that a fictitious credit has been acquired by drawing and re-drawing bills of exchange, and by accepting and endorsing promissory notes; yet there never was a doubt, but that the persons lending their names, by which they render themselves at last liable, may come in as creditors. The case of a man who has actually paid his money to support the credit of another, is infinitely stronger than that of lending a name only without advancing any money at all.

"There cannot be a greater paradox, than that a man should be guilty of a fraud, in lending his money with no other prospect but the chance of being repaid it.

"A notion 'that lending money to traders, knowing them to be in dubious, tottering, or distressed circumstances, upon mortgages or liens, is fraudulent; and consequently the contract void in case a bankruptcy ensues,' would throw all mercantile dealing into inextricable confusion. Men lend their money to traders upon mortgages or consignments of goods, because they suspect their circumstances, and will not run the risk of their general credit."

The charges in relation to the Life and Fire Company alone remain to be considered, which I shall do in my next letter.

JACOB BARKER.

LETTER IV.

Having in my previous letters fully discussed the long catalogue of false accusations against me, with the exception of those relative to the Life and Fire Insurance Company, I will now exhibit sufficient proof to put to flight every vestige of suspicion against me on this the most fruitful source of falsehood and misrepresentation.

The charge was, that I was knowing to the deranged state of the books of that company; that I knew the amount of protested paper it held; that I acted as their agent in selling their bonds as good and valuable securities, knowing them to be bad; that I was a party to the issuing of bonds to the Morris Canal Company and to the Tradesmen's Bank, amounting together to more than half a million of dollars; and, finally, that the losses of the bond holders were to be ascribed mainly to me.

As to being a party, or privy to the issuing of bonds to the Morris Canal Company and to the Tradesmen's Bank, the charge being entirely refuted by the proofs published in my previous letters, I shall confine this principally to the refutation of the other part of the calumny, for which I rely on the following testimony.

Thomas Vermilyea sworn on the part of the complainants, and asked by Mr. Barker what occasioned the failure of the Life and Fire Insurance Company?

He answers—The want of punctuality in the borrowers of the bonds of the company; the company met with no other loss to any great extent.

Being asked—Did the company ever make a loan of their bonds by the advice of Mr. Barker, or was he ever consulted in relation to any of their loans?

He answers—Not within my knowledge, during the time I was a Director of said company.

Being asked—Had Barker any knowledge of the amount of protested paper which the company had on hand?

He answers—He had not from me, nor from any body else, within my knowledge or belief. I do not mean to exclude his knowledge of the New-Orleans securities.

Being asked—Did Mr. Barker ever examine the books of the Life and Fire Insurance Company previous to July the 18th, 1826?

He answers—Not to my knowledge or belief.

Being asked—Did you not apply to Mr. Barker, on the day the Colombia bills were received by Mr. Eckford, (1st May, 1826,) for money for the Life and Fire Insurance Company?

He answers—I did.

Being asked—Did not Mr. Barker furnish the Life and Fire Company with bank notes to the amount of $47,000 on that day?

He answers—Yes.

Being asked—Had you, the Life and Fire Company, or Mr. Eckford, to your knowledge, at that time, any claims on Mr. Barker, and if any, what?

He answers—I do not know that Mr. Barker owed any of the parties.

Being asked—Were there any commissions, interest, or brokerage, paid Mr. Barker for said loans?

He answers—There was no compensation paid or given to Mr. Barker for those loans.

Being asked—When you sold bonds to Mr. Barker, what price did he pay therefor, and was it not the price at which said bonds were selling in market?

He answers—It was the price at which said bonds were selling in the market at the time he purchased.

Being asked—Did Mr. Barker solicit that the power of attorney, executed by the Life and Fire Insurance Company on the day of its failure, viz. on the eighteenth day of July, eighteen hundred and twenty-six, to him, should be executed, or was it a voluntary act without his solicitation?

He answers—Mr. Barker did not solicit the power of attorney in question, nor a transfer of any securities except the New-Orleans securities.

By Mr. Hoffman—Did not Mr. Eckford, on or about the eighteenth of July, eighteen hundred and twenty-six, propose and urge the deli-

very of the securities of the Life and Fire Insurance Company to Jacob Barker?

He answers—Mr. Eckford proposed and urged the delivery of the securities to Mr. Barker.

Matthew L. Davis, being sworn on the part of the complainants, and being asked by Mr. Barker—What occasioned the failure of the Life and Fire Insurance Company?

Says—That the embarrassments of the Life and Fire Insurance Company arose from the want of punctuality in the dealers. If their dealers had been punctual, the business of the company would have been very profitable.

Being asked—Were any of the loans of the bonds of the said company made by the advice of Jacob Barker?

He answers—Not to my knowledge, nor have I any reason to believe they were. Mr. Barker may have purchased bonds of the said company, as he was in the habit of doing so; but witness says he cannot recollect the amounts. As far as he has any knowledge, Mr. Barker paid for all he purchased, and he has not any doubt but he did; if it had been otherwise, he thinks he should have known of it. Does not know that Mr. Barker ever did, at any time, sell bonds of the Life and Fire Company for account of the office, nor does he believe that he did. Says, he believes the Life and Fire Insurance Company had outstanding bonds to the amount of about one million two hundred thousand dollars, in November, one thousand eight hundred and twenty-five, falling due at various periods, up to the year one thousand eight hundred and twenty-nine, or one thousand eight hundred and thirty; but principally falling due within six or nine months. But for all those bonds they had received what the directors thought a valuable consideration, principally notes of hand, two thirds or three fourths endorsed notes of hand, but some mortgages and other securities.

Being asked—How much of the capital of the Life and Fire Insurance Company was paid in?

He answers—He cannot say, but refers to the books of the company.

Being asked—If it was not more than three hundred thousand dollars?

Mr. Davis answers—Between three hundred and thirty thousand, and three hundred and sixty thousand dollars, he believes. Says at the time of the failure of the Life and Fire Company, from the best estimate which he could make from an examination of the securities themselves, aided by Mr. Vermilyea, and also by Mr. Kingsland and Mr. Gantz, clerks in said office, there were securities on hand equal in nominal amount to all the outstanding debts of the Company and its capital stock.

Being asked—He says that the stockholders participated in the profits of the Company, by way of dividends, down to the first of May, one thousand eight hundred and twenty-six. Says that the issuing of bonds or notes on loans by the Company, and the course of their business, was generally known to the community. Mr. Hough, one of the complainants,

was particularly acquainted with the course of business of the Company, and negotiated directly or indirectly with the company, as he believes, for the loan of some of those bonds or notes. Saw him occasionally at the office of the company, previous to the failure, conversing in relation to such loans; and witness has known him to return bonds in payment of notes, which notes had been received by the company for bonds previously loaned. Never heard of any complaint from any of the complainants of the manner of doing business by the company in issuing their bonds, or otherwise, to the best of his recollection, while the company was doing business.

Being asked—Did you ever hear of any complaints from any of the said complainants while the company made dividends?

He answers—Never, to the best of my recollection.

Being asked by Mr. Barker. He answers—The office frequently borrowed money of Mr. Barker, and gave him checks for the amount so borrowed, payable on the next or subsequent day. Whenever the Life and Fire Insurance Company borrowed money of Mr. Barker, they gave checks for the amount so borrowed, without any deduction for interest or commissions, or any thing of that nature; that the money so borrowed was generally deposited in bank to the credit of the Life and Fire Company, and was mingled with their other moneys. He recollects no exception. Mr. Barker got the notes of David Rogers & Son discounted for the Life and Fire, or discounted them himself, in April or May, 1826, at 6 or 7 per cent. per annum, and handed the money into the office. Does not recollect the amount, but should think it was 4 or 5000 dollars. Also Goodhue & Co.'s acceptances for about $10,000, and paid it in like manner. Believes Mr. Barker neither charged to the office nor received any commission for those transactions.

Being asked—If the $47,000 was not lent to the Life and Fire Company by Mr. Barker on the verbal guaranty of Mr. Eckford?

He answers—It was offered to Mr. Eckford on his verbal promise, and was so lent to him without any written memorandum.

Being asked—When did you first hear that the Company was to stop payment, and by whose order did you deliver the securities to Mr. Barker, and for what purpose?

He answers—The Secretary was instructed on the morning of the 18th July, 1826, that the company was to stop payment on that day. Mr. Eckford, Mr. Vermilyea, Mr. Swift, and Mr. Rathbone, were at the office before witness, as he believes, and gave him his said instructions when he came into the office. An instrument of writing had been drawn, which he thought, on examining it, would convey all the property of the Life and Fire Company to Mr. Barker, and he refused to execute it unless there was a schedule annexed thereto, containing a statement of the property intended to be embraced by said instrument. Mr. Barker objected to the manner in which the instrument was drawn, because it was an assignment, and not simply a power of attorney, he alleging that it was illegal, that it must be a power of attorney, and that an assignment would be an interference with, or violation of, the Spencer law, or words of that import. Witness says that he, the witness, did not object to the instrument on account of its being an assignment,

but only for the want of a schedule as above stated. The impression on his mind was, that Mr. Barker did not think the power of attorney before referred to would be a violation of the Spencer law. The securities which were handed to Mr. Barker, were so handed to him for the purpose of indemnifying Mr. Eckford against any loss in procuring the return of the 2000 shares to the Fulton Bank, and among other reasons this was the principal one for delivering the property over to Mr. Barker.

On being asked if he is quite sure that he never heard before the above morning, from the President or any of the Directors, that the said company were about to stop payment?

He answers--He is quite positive he never did, and he was never more surprised than when he heard that said company was to stop payment, as he has before stated.

Thomas Vermilyea, being again called, and asked--Were there any new loans made from November, 1825, to any extent, except in renewal of loans previously made?

He answers--There were not any new loans, to any extent, except the renewal of loans which had been contracted by the officers of the company a long time previous, and the object of the company was to diminish the debts of the company as fast as was prudent.

William P. Rathbone, being sworn, and questioned by Mr. Hoffman, says—He was a director of the Life and Fire Insurance Company at the time of its failure, and for some few days afterwards, when he resigned. Five shares of said stock stood in his name, but he never paid for said stock; it was transferred to him, he believes, for the purpose of making him a director. Was transferred to him, he believes, by Henry Eckford, who, he believes, was the owner of said stock. Would at any time have paid for said stock if he had been called upon for payment thereof. Says he never had an interest in any stock in said company except the five shares above mentioned, and said shares were transferred to the Life and Fire Insurance Company when witness resigned.

On being asked by Mr. Barker--Did Mr. Barker state to you, in the office of the Life and Fire Insurance Company, in the presence of Mr. Eckford and Mr. Vermilyea, or either of them, two or three months before the failure of the company, that he was negotiating for money for the accommodation of the Life and Fire Insurance Company, that he anticipated to get it by giving the New Orleans securities, viz. Kenner & Co. and others belonging to said company, but then in his possession?

He answers—Mr. Barker informed me that he was about raising money for the benefit of the Life and Fire. I delivered to Mr. Barker the securities the next morning. Mr. Barker said, when he applied for them, that he would offer the New-Orleans securities to his directors as a security for negotiations then making, or to be made, for the accommodation of the Life and Fire. When Mr. Barker received said securities from me, he said he should offer them, but they would not be received, as the directors would take the New-Orleans securities, and he would return to me those received from me. About a week

after Mr. Barker did return said securities to me, and said that as he had anticipated the companies had taken the New-Orleans securities.

Horatio Kingsland, sworn on the part of the complainants, and being asked—If he was not in the employment of the Life and Fire Company as book-keeper or clerk?

He answers—That he was, down to the time of the failure, and subsequently he has been employed by the receivers.

Being asked by Mr. Barker—Did the Life and Fire Company loan to Jacob Barker, to your knowledge, any money, in the months of May, June, or July, eighteen hundred and twenty-six.

He answers—I do not know that the company loaned Mr. Barker any money during the above periods.

Being asked—Did they at any time in eighteen hundred and twenty-six?

He answers—I think not.

Being asked—Did you borrow from Jacob Barker, for the Life and Fire Company, large sums of money, from time to time, from early in the year eighteen hundred and twenty-six until the time of the failure of said company?

He answers—I did not, but the Life and Fire Company did.

Being asked—Did you go over to the office of Mr. Barker, or to the offices of the Dutchess and Mercantile Companies, where Mr. Barker was, and receive from him said money?

He answers—I sometimes did go to each of those offices and receive from Barker money for the Life and Fire. The Life and Fire Company, from the time they commenced borrowing of Mr. Barker, which was a few months previous to their failure, sometimes received money from him for such borrowings, and not checks.

Horatio Kingsland, sworn on the conspiracy trial, testified—That Mr. Davis had directed him not to let Mr. Barker see the books. This was done several times during the year. Mr. Barker never saw the books to witness' knowledge; part of the books were kept up stairs. Does not recollect that Mr. Barker ever was up stairs. Journal and ledger kept up stairs.

George W. Gantz, also a clerk of the Life and Fire Company, sworn on the conspiracy trial, testified—That Mr. Barker had nothing to do with the concerns of the company, except on his own legitimate business, to witness' own knowledge. Had orders from Mr. Davis not to let Mr. Barker see any of the books, statements, &c. This might be as early as May, or June. He assigned no reason. Never saw Mr. Barker open a book. He has looked over witness, when witness was looking for a large bond, which Mr. Barker wished reduced to smaller ones. These orders were repeated three or four times. Witness was in the office, generally from 10 to 3 o'clock; was located part of the time down stairs, and part up stairs. A person could not tell any thing by looking at the bond book as to the state of the company. Has no reason to believe that Mr. Barker knew any thing more of the state of the company than any other dealer.

I have to ask the favour of Judge Edwards carefully to examine the testimony in relation to the books of the Life and Fire, and to remember that he said in his charge to the jury, that the books of the Life and Fire Insurance Company were open to Barker's hands, and that it was fair to presume that he knew the great amount of worthless securities they held, and consequently the utter insolvency of the company, and this too not only without testimony, but in direct contradiction of the testimony of Messrs. Gantz and Kingsland, the two clerks of the company.

Judge Edwards will also be pleased to remember that he fined me one hundred dollars for replying, when a witness asked me if I expected him to impeach himself, that he had, in my opinion, already done so; and that at the same time he imposed this fine, he refused to hear testimony proving that such witness had perjured himself in the testimony he gave.

Judge Edwards will also remember that he refused to furnish a statement of the trial for the use of the Supreme Court, although earnestly solicited so to do by myself and my counsel, the Hon. Ambrose Spencer and George Griffin, Esq., and that he afterwards certified a statement prepared on the part of the prosecution, and fraught from beginning to end with errors, and which neither myself nor my counsel had an opportunity of seeing, until it should have performed its intended office with the Supreme Court.

Having disposed of all the charges brought against me, I shall devote my next letter to the proofs in support of my having saved the Morris Canal and Banking Company and Fulton Bank from failure.

JACOB BARKER.

LETTER V.

Agreeable to the promise made in my last letter, I proceed to establish my claim for having saved the Morris Canal Bank and the Fulton Bank from failure. It will be recollected that George W. Brown testified that Jacob Barker never advised, or was consulted, or spoken to by him, in relation to the Fulton Bank, excepting that, after the failure of the Hudson Company, Mr. Barker applied to him and other directors of the Fulton Bank to resign their seats, in consequence of which application, they did resign; and no one, who knows how much banking institutions are dependent upon credit for existence, will dispute that the Fulton Bank would have shared the fate of the Hudson Company, if those directors had not resigned; the connexion between the two institutions being admitted, as well as their both being under the control of the same men. And was it not natural for Mr. Barker, deeply interested in the Fulton Bank stock, when he saw his interest thus going to ruin, to wish more skilful care-takers appointed to govern it?

The following testimony, however, will enable the reader to form correct opinions as to both banks.

Jacob Clinch, the former cashier of the Fulton Bank, sworn on the conspiracy trials, said—Barker brought specie to the Fulton Bank, to assist them when they were run, on the 17th July. There was one sum of ten thousand dollars, and another of seven thousand dollars. He believed the latter was brought by Barker's son. Did not know whether Barker's assistance was solicited by the directors or volunteered. It was very useful, and appeared to be very acceptable to the president and directors. The specie in the bank was, at the time, reduced to three thousand dollars, and the banking house was thronged with people to get their bills redeemed.

Oliver H. Hicks, the present cashier of the Fulton Bank, sworn on the conspiracy trial, testified—That he considered the change of directors, in July, very beneficial to the bank, as those who went out were bankrupts. It also restored public confidence. When the Fulton Bank was run, in July, he heard Mr. Leavitt, the president, request Mr. Barker to send the specie immediately, and to get a carriage for the purpose.

Robert Carter, a director of the Fulton Bank, sworn on the conspiracy trial, testified, and the District Attorney admitted—That Barker entered into a negotiation for the change of the directors of the Fulton Bank, in concert with Leavitt and the board of directors, and at their request. He further testified, that Barker co-operated with him (the witness) and the board of directors, after the failure of the Hudson Company, in July, in getting security for the debt due from the said company. That he considered Barker's services valuable, and so vitally important, that he, a director, considered it necessary to get an injunction on the bank had not the negotiation to change the directors succeeded. Barker had constant intercourse with the board of directors.

Richard M. Lawrence, a director of the Fulton Bank, testified, that on the 17th July he saw Barker at the Board of Directors pressing them to support the Bank with their individual responsibility. Barker offered, if they would do so, to guarantee them against loss, and to transfer to them forty thousand dollars of good stock, over which he had the control, as a collateral security against loss by such responsibility, in case the assets of the bank should prove insufficient for their indemnity. Thinks that he understood, at the Board of Directors, that Barker had induced Spencer and Brown, and their associates, to resign. Does not know on what terms. Whether the bank would have failed or not, if they had not resigned, witness does not know. Considered their resignation very beneficial to the bank. Considered Barker's conduct to have been very serviceable to the bank, and that he acted in accordance with the wishes of the President and Directors.

William Bayard, Jun. being sworn on the part of Mr. Barker, and being asked—Says he has no recollection of seeing Mr. Barker in the office of the Morris Canal Company prior to the failure of the Life and Fire Insurance Company, and Mr. Barker then came there by invitation from the Morris Canal Company, to assist in furnishing specie for the Morris Canal Company.

Was you a Director and President pro tempore of the Morris Canal and Banking Company, in May, one thousand eight hundred and twenty-six?

He answers—I was.

The following letter from Mr. Eckford was brought to my office by Mr. Bayard; it is one of the important documents now on file in the clerk's office, of the use of which the District Attorney deprived me on the trial, and which I shall notice more at large in my next letter.

N. Y. 21 July, 1826.

Dear Sir,

If you can obtain ten thousand dollars for the Morris, I will guarantee it. Mr. Bayard will hand you the notes and bonds for $25,000; it will accommodate very much. Yours, &c.

H. E.

10 will be wanted to-day, and 5 probably to-morrow, and 5 when wanted after. You had better negotiate this with Mr. Bayard.

Directed to *Jacob Barker*, Esq.

A true Copy, R. HATFIELD.

R. Gilchrist, being sworn on the conspiracy trials, on the part of the prosecution, and cross-examined by Mr. Barker, testified—That he came to receive money from Barker at the office of the Dutchess County Insurance Company; that Barker advised taking specie; it was after the failure of the Life and Fire Company, that he received of Barker 5000 dollars in five notes of the U. S. Bank of 1000 dollars each; that the money is still due to the Dutchess County Insurance Company; knows it by his own entry in the books of the Morris Canal Company; lawful interest was to be paid for it, and no more.

Abraham Ogden, a Director of the Morris Canal Bank, sworn on the conspiracy trials, testified—That soon after the failure of the Life and Fire Company, he told Leavitt that the Morris Canal Bank would stop payment if they did not immediately get back the twenty-five hundred shares of their stock, which was held by the Fulton Bank, at which Leavitt expressed great surprise. Most of the funds of the Morris Canal Bank were consumed in erecting the Canal.

David B. Ogden, a Director of the Morris Canal Bank, sworn in the Chancery suit on the part of Mr. Barker, and asked—Were you present when the agreement was made with the Fulton Bank for the return of the twenty-five hundred shares of Morris Canal stock in August, 1826?

Answers—I was. When said agreement was completed, it was completed at my office, and I was present.

Being asked—Was Jacob Barker present? Did he take part in the negotiation? Did he furnish stock and other securities given in exchange therefor? and would not the negotiation have been broken off but for his co-operation therein?

Answers—Mr. Barker was in from time to time during the negotiation. My impression is, however, that Mr. Leavitt said that he would not negotiate with Mr. Barker, but Mr. Barker was consulting with Mr. Eckford and myself, from time to time, during the negotiations of that day. My impression is, and I have no doubt of it, that all the stock and securities which were given to the Fulton Bank in that exchange, were brought to the office by Mr. Barker, except a note or endorsement of Le Roy & Bayard, and delivered to Mr. Leavitt. At one time, about the close, the negotiation was nearly broken off, and it certainly would have been but for the suggestion of Mr. Barker, which suggestion was acted upon by all the parties, and in which Mr. Barker took an active part, and the agreement was thereupon consummated.

That I did save the Fulton Bank from failure, will probably be conceded by all who read the testimony of Mr. Clinch and Mr. Hicks, the two cashiers: the multitude surrounding the bank with its bills for redemption, its specie reduced to three thousand dollars, application was made to me, and an immediate supply sent, and security offered by me to the directors if they would aid in sustaining the bank; besides, George W. Brown swears that the directors connected with the insolvent companies resigned their seats as Directors of the Fulton Bank on application from me, and in consequence of such application; and from the testimony of Mr. Carter and other directors, it must be manifest that the bank would have stopped payment but for their resignations; and as to the Morris Canal and Banking Company, it is obvious that if the 2500 shares of its stock had not been obtained, that institution would have stopped payment in three days; and from the testimony of David B. Ogden, Esq. I think it will be admitted that, with a knowledge of this fact, I exerted myself to the utmost, and that, but for my exertions, the said 2500 shares of its stock would not have been obtained in season to have prevented that catastrophe; if so, enough has been put forth to enable the reader to form a correct opinion as to the part I acted; therefore my next and last letter will be principally devoted to the conduct of the District Attorney.

JACOB BARKER.

LETTER VI.

Having fully discussed the affairs of the various stock companies, it only remains for me now to sustain the charge made against Hugh Maxwell, Esq. District Attorney, of having arbitrarily and unlawfully

deprived me of my documentary proofs, and of refusing to comply with the solemn promise he made to the Grand Jury, to allow me to benefit by their use, on the trial; and that he possessed himself of and suppressed other important papers. For proofs of the latter, I refer to the preceding testimony of George W. Brown and Mark Spencer, about the contract signed Henry Eckford & Co. and to the fact of his having in his possession the *seventh* letter from Mr. Eckford, as appears by the testimony of Mr. Hatfield, at the close of this letter; and for proof of the whole charge, to the following proofs.

John D. Brown sworn, and being asked—Was you knowing to an arrangement for the loan of two thousand shares of the Fulton Bank stock to the Life and Fire Insurance Company, or the President thereof, in May, of the year one thousand eight hundred and twenty-six, by George W. Brown and Mark Spencer?

He answers—I was, and have known of it long since, but did not know of it at the time the exchange was made.

Being asked—Have you seen a contract or receipt, signed Henry Eckford & Co. for one thousand shares of said stock?

He answers—I have seen a document signed as above, which is a receipt for said stock, and a guaranty to return it to Mark Spencer, for one thousand shares of that stock.

Being asked—Was the signature of that document in the hand-writing of William P. Rathbone?

He answers—It was, according to the best of his belief.

Being asked—In whose hands did you see it?

He answers—I called on Mr. Spencer, about twelve months since, to ascertain if there was any such document; he informed me that he had given it up to William P. Rathbone, to be exchanged for a joint guaranty to Brown and Spencer, for the two thousand shares. Shortly after this, I employed Mr. Maxwell to bring a suit against Mr. Eckford, in the name of George W. Brown; and Mr. Maxwell showed me the document first inquired about, as a paper which would be useful in the suit against Mr. Eckford, above spoken of. It was as early as March, one thousand eight hundred and twenty-seven, and may have been January of that year, that Mr. Maxwell showed me said document. At any rate, a suit was commenced, on or after that day, in the name of George W. Brown, against Henry Eckford.

Clarkson Crolius, sworn on the part of Mr. Barker, and being asked—Was you a member of the Grand Jury for the City and County of New-York, for the month of June, one thousand eight hundred and twenty-seven?

He answers—He was a member of the Grand Jury in the summer of that year, and he thinks it was for the month of June.

Being asked—Did you see sundry letters from Henry Eckford, documents and papers, appertaining, directly or indirectly, to the account and transactions between Jacob Barker and the Life and Fire Insurance Company?

He answers—I did: I saw said letters, and heard them read; other

papers also. All said papers, witness thinks, had a bearing, directly or indirectly, on the subject inquired about. Some of the documents related to the transactions of Mr. Rathbone.

Being asked—From whom did you receive those papers?

He answers—They were presented to the Grand Jury by Mr. Barker.

Being asked—Did the Grand Jury return those papers to Mr. Barker?

He answers—They did not.

Being asked—What was done with those papers?

He answers—They were handed to the foreman of the Grand Jury to deliver to the Court, with the express understanding that Mr. Barker should have them whenever he should need them. This was so assented to by the District Attorney, and promised by him, that Mr. Barker should have the benefit of said papers before the Court, whenever they should be required. The reason of this pledge being taken, was because Mr. Barker stated to the Grand Jury, that he was afraid that if he parted with them he should never be able to obtain them again. The District Attorney stated, that the Court was a safe deposite for those papers, and that Mr. Barker could have them when required. Mr. Barker gave them up with great reluctance. He considered the District Attorney as expressing his opinion that it was the duty of the Grand Jury to retain those papers and hand them to the Court.

Being asked by Mr. Barker—Did I not request the Grand Jury, during their session, to return said papers to me, and object to their being given to any one else?

He answers—I think you did. Mr. Barker stated that there was a suit coming on shortly against him, for an alleged conspiracy, in which those papers would be of the most essential service to him. Mr. Barker parted with them with great reluctance.

Being examined by Mr. Hoffman, says—He knows of no schedule of said papers being made; cannot enumerate them. There may have been one or two of them which were not read. Says, there may have been from twelve to fifteen papers, perhaps more, perhaps less; he cannot speak with certainty as to their number; rather thinks there were rising twelve; there were, probably, three letters from Mr. Eckford.

Edward Probyn, sworn on the part of Mr. Barker, and being asked—Was you a member of the Grand Jury, for the City and County of New-York, for the month of June, one thousand eight hundred and twenty-seven?

He answers—He was.

The examination of Clarkson Crolius being read over to him, he says the same is correct, and is a fair statement of what took place before the Grand Jury on that occasion. Says it was perfectly understood by the Grand Jury that Mr. Barker was to have the benefit of the papers at the approaching trial for the alleged conspiracy, and that when Mr. Barker objected to leaving his papers with the Grand Jury,

the question was put to him, whether he was willing to leave the papers rather than withdraw his complaint? Mr. Barker replied, if he could not have them back on any other terms, he would rather leave them, and he left them with extreme reluctance. Mr. Maxwell argued his right to appear before the Grand Jury at that time, and it was opposed by some of the Grand Jury.

Anson G. Phelps, sworn on the part of Mr. Barker, and being asked —Was you a member of the Grand Jury for the City and County of New-York for the month of June, one thousand eight hundred and twenty-seven?

He answers—I do not recollect the month, but I was a member of the Grand Jury the fore part of last summer. The testimony of Clarkson Crolius and Edward Probyn being read over to him, he says said testimony is generally correct. The District Attorney claimed that these documents belonged to the Court, and that as such, it was his duty not to allow them to be returned to Mr. Barker, but that they would at all times be accessible to Mr. Barker on the files of the Court.

George P. Rogers, sworn on the part of Mr. Barker, and asked—Was you not a member of the Grand Jury in June, one thousand eight hundred and twenty-seven?

He answers—I was a member of the Grand Jury for the month of June, one thousand eight hundred and twenty-seven, for the City and County of New-York. The testimony of Clarkson Crolius, Edward Probyn, and Anson G. Phelps, being read over to him, at his request, he says, it is generally correct throughout, and is substantially true. Mr. Maxwell was present, and insisted upon his right to be present, before the Grand Jury. Some of the jury were very much opposed to it. There was some discussion among the jury. There was a considerable number of papers laid before the Grand Jury by Mr. Barker; they were handed to the foreman. Mr. Barker objected very strongly to their being retained by the jury, and kept from him. These papers were handed to the court. The District Attorney told the foreman of the Grand Jury to retain them, and hand them to the court, and not to return them to Mr. Barker. Witness thought they were to become a record of the court, and that the parties could have reference to them whenever they might want them, or copies of them, by application to the court.

Hugh Maxwell, sworn on the part of Mr. Barker, and being asked—Have you seen, since the failure of the Life and Fire Insurance Company, sundry original letters, in the hand writing of Henry Eckford, addressed to Jacob Barker, or J. Barker?

He answers—I have.

Being asked—Have you had them in your possession?

He answers—I have.

Being asked—Were they in your possession in the month of June, one thousand eight hundred and twenty-seven. during the trial of Mr. Barker, for an alleged conspiracy?

He answers—They were in my possession at one time, having been procured by me from the clerk of the Court, Mr. Hatfield, to whom they had been given by the Grand Jury.

Being asked—What is meant by one time?

He answers—Part of them were in my possession, I think, before the trial, and all of them about the time of the trial.

Being asked—Were all, or any of them, in your possession at any time during the trial?

He answers—They were all in my possession, I believe, at that time.

Being asked—Did Mr. Barker apply to you to produce them on that trial?

He answers—Mr. Barker, or somebody else, spoke to me about them, and I referred them to Mr. Hatfield, supposing I had returned them to Mr. Hatfield.

Being asked—Did not Mr. Barker apply in person?

He answers—I think he did; and that some one else came with a subpœna *duces tecum.*

Being asked—Were they produced on that trial?

He answers—I believe they were not, and that no other application was made on the subject; and he says, if the mistake had been explained, they would have been exhibited; they were in court at the time, in the bundle of papers in my possession.

Being asked—When you say that they had been given to Mr. Hatfield, the clerk, by the Grand Jury, do you mean to say that of your own knowledge, or from the information of others?

He answers—I infer it because it was the ordinary course of business for the Grand Jury to return papers to the clerk, and I applied to him for them.

Being asked—Do you know how the Grand Jury came in possession of the said letters from Henry Eckford?

He answers—I decline answering this question, because my information was officially obtained.

Being asked—Was you informed that the Grand Jury had a special meeting of an afternoon, towards the close of the session, immediately preceding the delivery of said letters to the clerk, to hear a complaint from Mr. Barker against Richard Riker and William P. Rathbone, and others?

He declines answering, for the reasons above assigned.

Being asked—Did you not go to that Grand Jury, and find Mr. Barker there, and demand to be present during his complaint?

He answers as last beforesaid.

Being asked—Did not the Grand Jury decide that you had no right to be present at the time Mr. Barker was making his complaint, and did you not retire in consequence thereof, first demanding of them to retain whatever papers Mr. Barker should present in support of his complaint?

He answers as last aforesaid.

Being asked—Have you been retained by the Life and Fire Insurance Company since the failure of said company?

He answers—I was employed as counsel, some two or three weeks before the indictments were found against the individuals connected

with that company, by or on behalf of said company; it was by letter from Mr. Vermilyea, or some one of the directors or officers of said company; and upon Mr. Lawrence and Mr. Hoffman's being appointed receivers of said company, I called on Mr. Lawrence and informed him I had been so retained. I am inclined to think, and am certain, the retainer was sent to me after the failure of said company.

Being asked—Have you brought with you a letter from Henry Eckford to Jacob Barker, bearing date on or about the seventh day of May, one thousand eight hundred and twenty-six, and three other letters from said Eckford to said Barker, of the same year; also the several papers, which in the late trials for conspiracy, were denominated the Rathbone papers; also, a receipt, bearing date on or about May the tenth, one thousand eight hundred and twenty-six, for one thousand shares Fulton Bank stock, signed H. Eckford and Co., or Henry Eckford and Co.?

He answers—The last paper I do not recollect ever to have seen; with respect to the others, they are in the possession of Mr. Hatfield, the clerk of the said court, as I believe. They are not in my possession. The letters referred to were left with Mr. Hatfield, some two or three weeks ago. The four papers, denominated the Rathbone papers, were left with him this morning, since the service of the subpœna *duces tecum* in this cause, the clerk being, in the opinion of witness, the proper officer to produce papers.

Being asked—Was Mr. Hatfield the clerk of the court, where the conspiracy trial aforesaid took place, in June, one thousand eight hundred and twenty-seven, when the papers were demanded as aforesaid?

He answers—Mr. Hatfield was not the clerk of the court where the cause was tried; Mr. Fairlie was.

Here Mr. Maxwell required the questions to be reduced to writing. To give time to prepare them he was suffered to depart. Not attending at the next meeting, a new subpœna was sent him; still he did not attend, and all the efforts of Mr. Barker to induce him to give further attendance before the Master in Chancery, have proved unavailing.

Richard Hatfield, sworn on the part of Mr. Barker, produces six original letters from Henry Eckford to Jacob Barker, and one from the same, dated July the twenty-ninth, no direction. Says—He believes said letters to be in the hand-writing and signature of Henry Eckford, with the exception of the one dated the thirteenth September, one thousand eight hundred and twenty-six. The body of this letter is in the hand-writing of some other person, but the signature he believes to be Mr. Eckford's—has seen Mr. Eckford write once or twice, perhaps more, and he believes them to be Mr. Eckford's. The copies produced and left by witness, are true copies of said originals.

Mr. Hatfield again called, by Mr. Barker, and being asked—From whom did you receive the letters alluded to in your former examination?

He answers—I received them from the Grand Jury, in May or June, one thousand eight hundred and twenty-seven, I believe, or thereabouts, with other papers.

Being asked—Have they remained in your possession ever since?

He answers—He thinks on the very day they were delivered, but is not certain as to the day, but, at any rate, within a very few days thereafter, he delivered to Mr. Maxwell, at his request, six letters purporting to be from Henry Eckford to Jacob Barker, together with a deposition of Mr. Barker.

Being asked—When did you receive them back from Mr. Maxwell?

He answers—About two or three weeks past he thinks.

Being asked—If you can particularize which of the seven letters produced by you, compose the six referred to as above?

He answers—He cannot say which.

Being asked—Did you receive from Mr. Maxwell the seventh letter with the six so returned?

He answers—I received from Mr. Maxwell, or from his clerk, a number of letters, which I supposed to be the same I had delivered to him; there were seven letters so delivered to witness, as the witness found upon examination here before the Master, and not before.

Being asked—Was you served with a subpœna *duces tecum*, on behalf of Mr. Barker, to produce those letters in court, on the conspiracy trial, in June, one thousand eight hundred and twenty-seven, at the trial of Mr. Barker for an alleged conspiracy?

He answers—He was served with such subpœna to produce certain letters, he presumes those inquired about.

Being asked—Did you not appear in court on that trial, and inform Mr. Barker that you had no such papers in your possession?

He answers—He did.

Being asked—Did you not at that time inform the District Attorney that such subpœna had been served on you, and that you, the witness, had not the papers, but that he, the District Attorney, had them?

He answers—He did.

Being asked—Did Mr. Maxwell on that occasion deny having them?

He answers—I think he did at first, but afterwards, at the same interview, he, the District Attorney, became satisfied that he, the District Attorney, had them, as witness believes.

Being asked—Do you know the hand-writing of the endorsement on a letter from H. Eckford, which is not addressed to Jacob Barker or any other person, which letter is before referred to in your previous examination, and bears date July the twenty-ninth, one thousand eight hundred and twenty-six?

He answers—He cannot say he does, but he believes it to be Mr. Colden's.

Mr. Hatfield again called by Mr. Barker, and asked—When you say you delivered the letters from Mr. Eckford, how do you mean to be understood?

He answers—Mr. Maxwell asked me for Barker's papers, received from the Grand Jury, the same day, or very soon thereafter, on which they were received from the Grand Jury—I think it was in court where they were received—I handed him the bundle to look at; he selected out the letters of Mr. Eckford, and was about taking them away, leaving the others. I requested him to stop until I could take a list of them. He did so; I made a memorandum on the bundle that six letters from

Henry Eckford to Mr. Barker had been taken out and delivered to the District Attorney, with Mr. Barker's deposition, or words to that effect.

Being asked—Did Mr. Maxwell leave some papers with you, on Friday, the twenty-fifth day of January, one thousand eight hundred and twenty-eight, denominated the Rathbone papers? and how many?

He answers—He left four papers with me, marked 1, 2, 3, 4.

Being asked—Did Mr. Maxwell require a receipt for said papers?

He answers—He did; I gave it.

Being asked—Were those papers ever in your possession before?

He answers—Never before.

Being asked—Were they not among any papers previously filed by you as clerk?

He answers—They were not.

The reader will observe, that Mr. Maxwell, under the solemnity of his oath, says, "If the mistake had been explained, they would have been exhibited;" and that Mr. Hatfield, under the solemnity of his oath, says, "That on receiving the subpœna to produce the papers, he went into the court, during the trial of Mr. Barker, and informed the District Attorney that he, Hatfield, had them not, but that he, the District Attorney, had them." Thus, we see, the alleged mistake was explained, and yet the papers were not produced, and to believe they were forgotten requires an uncommon share of charity; and in forming an opinion on this solemn point, the mind is irresistibly led to review the whole conduct of the District Attorney in the case, especially the manner in which he obtained the papers, the solemn promise made to the Grand Jury that the papers should be produced on trial, the unlawful manner of removing them from the files of the court, the indignity with which he treated the Supreme Court in defying their authority, by telling them he would not submit to its exercise, when they refused to allow the cause to go back to the Court of Oyer and Terminer, and by subsequently applying to the Grand Jury for new indictments to enable him to carry that defiance into effect. The few individuals who have contributed their money towards the purchase of a service of plate for the District Attorney, are requested to consider these things, and also to read the preceding testimony, that they may know the character and conduct that they have undertaken to sustain.

When I detected and exposed the appalling fact that the District Attorney had accepted of three hundred dollars from Mr. Eckford, and other sums from divers others of the indicted, immediately after the first trial, it was attempted by Mr. Maxwell or his friend, through the columns of the Enquirer, to induce the public to believe that the letters from Mr. Eckford, of which the District Attorney deprived me, were of no consequence; I ask the reader to consider that of the 7th of May, and also that of 21st July, which are in the words following:

New-York, 7th May, 1826.

Dear Sir,

In consequence of advice from Baltimore, it became necessary for me to go on to-day. Have the goodness to send me, by to-day's mail,

the papers you talked of. It will be 12 o'clock to-morrow before I leave Philadelphia. You will have the goodness to give such aid as you can in completing the arrangement with Mr. Spencer.

Your friend,

H. ECKFORD.

Jacob Barker, Esq.

Directed, *Jacob Barker*, Esq.

Present.

A true Copy,

R. HATFIELD.

New-York, 21st July, 1826.

Dear Sir,

If you can obtain ten thousand dollars for the Morris, I will guarantee it. Mr. Bayard will hand you the notes and bonds for $25,000—it will accommodate very much.

Yours, &c.

H. E.

10 will be wanted to-day, and 5 probably to-morrow, and 5 when wanted after. You had better negotiate this with Mr. Bayard.

Directed to *Jacob Barker*, Esq.

A true Copy,

R. HATFIELD.

It will be perceived that these letters are of the utmost importance, as they go to falsify the declaration of Mr. Maxwell *in the sense he intended*, that "Mr. Eckford had been the victim of others;" and the seventh letter, heretofore spoken of, produced by Mr. Maxwell, by mistake, in the Chancery cause, when taken in connexion with the Rathbone papers, becomes of the first importance in establishing that there was a systematic plan, formed by certain persons, for my ruin; and the contract signed Henry Eckford & Co. is, of itself, of vast importance. If the security was good given to the Fulton Bank, for those two thousand shares, there was no wrong done that bank, in relation thereto; and was the guaranty of Henry Eckford & Co. of no importance in that point of view?

In addition to the manifest impropriety of the public prosecutor accepting money from indicted individuals, his conduct in this affair presents so many other points of objection, that it is difficult to know which to select for animadversion. If the testimony of John D. Brown does not make him out as taking fees on both sides, it puts upon him the necessity of explaining to his brethren of the profession, and after reading this testimony, I think it will be conceded that he, at least, makes the secrets of his official station serviceable in inducing civil suits to be conducted by himself.

When it is considered that a dreadful conspiracy had been formed for the ruin of a citizen, and that such citizen applied to his peers, the Grand Jury, for protection and aid, that the public prosecutor obtruded himself into the sanctuary of their deliberations, and induced them to believe it was their duty to assist him in the iniquitous scheme of de-

priving such citizen of his proofs, and thus, in place of sending for a single witness, (of which they were furnished with a long list,) converting what had invariably been considered the shield and safeguard of the citizen into an engine of oppression and injustice—when these solemn truths are considered, these complaints will not, I am persuaded, be thought unreasonable.

JACOB BARKER.

LETTER VII.

All the frauds alleged to have been committed on the stock companies in 1826, dwindle into insignificance when compared with the conduct of the persons who have attempted to create suspicions against me, knowing me to be not only innocent, but totally ignorant of those transactions. When I wrote my sixth letter, I despaired of being enabled to procure any further testimony on the subject of the conspiracy. Every charge brought against me had been fully refuted, and the names of the real parties to all the transactions complained of placed before the public, with the exception of the Tradesmen's Bank affair. Accident has now, however, brought them to light.

Soon after the publication of my last letter, certain papers were produced before Thomas Bolton, Esq., Master in Chancery, on the part of the complainants in the suit against me in relation to the effects of the Life and Fire Insurance Company, some of which led to a full development of the parties to the purchase and sale of the Tradesmen's Bank. One of these papers was a memorandum, in the hand-writing of Matthew L. Davis, which furnished a key to certain entries in the books of the Life and Fire Company, and with those entries and the testimony to which they have led, discloses the particulars of the transaction, as well as the parties to it, and the names of the brokers employed to raise a portion of the money on Life and Fire Bonds to pay for its purchase, and also from whom the balance was procured. They also fix the periods when the negotiations were carried on and the bargain concluded. At those periods, I was absent at the distance of nearly three hundred miles from the city on a visit with my family at Nantucket. My ignorance of all these matters cannot better be illustrated than by the fact of my inability, through all my trials and troubles, to bring the transactions home to others, and to prove the time when they took place; and such was the death-like secrecy preserved by the parties, that my inability to prove the facts subjected me to the most serious risks, great expense, ruinous losses, and most unfavourable imputations, although the District Attorney had the means of exhibiting them from the time of the indictment, as the paper which explained the entries in the book was in the celebrated iron chest of the Life and Fire Company, which has been in the possession of the Receivers, appointed by the Chancellor, since the 14th August, 1826, and before my in-

dictment, to which the District Attorney had free access, and about which he made such a wicked parade during the trials. If he had half the talent and research that he pretends to, he could, if his object had been to elicit the truth, have fixed the transaction on the real actors, without the least difficulty, by the aid of the memorandums in question, and the testimony in his possession. But he had received money from those real actors.

In this affair the funds of at least three incorporated companies have been applied and lost, whether fraudulently or otherwise it is not my province to decide. Yet all the principal persons appointed to watch over and guard those funds for the absent stockholders, have been let off and excused, and every device has been resorted to to make me, who was not a director, officer, or stockholder, and was not in the state of New-York at the time, answerable for the misdeeds of others.

It will be seen by the testimony that the persons selling, individually subscribed their names at the time to the part they acted; therefore there cannot be any mistake in this matter. It will also be seen that the minutes of the proceedings of the midnight meeting, where the boon was apportioned, are in the hand-writing of Richard Riker, the Recorder. It will be recollected that the District Attorney accused me of attending that meeting and taking part in the proceedings, although I was at Nantucket at the time.

This transaction, which the accompanying testimony will unfold, proves to be of the most exceptionable character, and was so described by me on the conspiracy trials, to which the District Attorney then replied, that for the purpose of sheltering myself, I had indulged in a most violent philippic against the Directors of the Tradesmen's Bank. I ask the reader to consider whether or not the facts do not fully sustain all I then said; and whether it was not the duty of the District Attorney to have investigated their conduct, in place of becoming their apologist. Let it be particularly observed, and always remembered, that the important document now produced by the Recorder, was in his (the Recorder's) hands during the conspiracy trials; and that although he was a witness on the part of the prosecution, he did not then produce it, but left me to suffer by an unfounded verdict, which that paper, had it been then produced, would have enabled me to have averted in the most satisfactory manner.

The suggestion of the Recorder, that he was counsel for Mr. Reed, and, therefore, excused from producing the contract before the Master in Chancery, aggravates the injury. Could that reason have influenced its concealment on the conspiracy trials? In addition to the impropriety of the judge of the criminal court in this city being counsel for an accused person, the Recorder was one of the principals in this transaction. Mr. Reed was the agent, and, in taking possession of a paper made by such agent, by virtue of such principal's authority, he cannot be considered as counsel, but as a party in possession of a document, to which he was legally entitled. I am under bonds, by the decree of this very Recorder, not to write libels; yet I will, in full reliance that the public will sustain me when I make out my case by clear and indisputable proofs, proceed to detail the testimony.

IN CHANCERY.

H. & G. Barclay, and others, vs. *Jacob Barker, and others.*

Oct. 28, 1828.—Mr. Hoffman, on the part of the complainants, moved to open the testimony, for the purpose of introducing a document, and read an affidavit of his own in support thereof, and handed in the bundle mentioned in the affidavit. The Master allowed the motion.

John L. Lawrence, being called on behalf of the complainants, in answer to the inquiry of Mr. Hoffman, states, that he is one of the Receivers of the Life and Fire Insurance Company. On being shown a paper in pencil marked L. he says it is a paper in his writing, and made by him. It was made, he presumes, though he cannot speak with certainty, within a short time after taking possession of the papers of the Life and Fire Insurance Company, upon examining among the papers and drawers of the Company. He would suppose it was made within a month after his appointment, though he cannot speak with accuracy as to time. The two papers shown him marked M. and N. correspond in description with the memorandum mentioned by witness in the paper marked L.; but there being no marks of his own by which he can identify them, he cannot say positively whether they are the same papers or not.

Murray Hoffman being examined as a witness, says—that he was appointed one of the Receivers of the Life and Fire Insurance Company, and he, together with John L. Lawrence, Esq., did take possession of the books, papers, and effects thereof, on or about the 14th day of August, 1826; that there were many papers in an iron chest, in the office of said Company, which chest had two keys, one of which was kept by this deponent, the other by the said John L. Lawrence, his co-receiver; that the bundle of papers in which the paper marked O. was found, was taken by this deponent from a drawer in the said iron chest, on the day when it was handed to the Master in this cause, and that the papers marked M. L. and N. were found in the same drawer.

Paper N.

Cr. V. - - - - - - - - - - - -	$10,010
" *E.* - - - - - - - - - - - -	$11,500
Dr. A. - - - - - - - - - - - -	$28,510

REMARKS.

The $28,510, mentioned in the preceding memorandum, with $1490, made the $30,000 paid Matthew Reed on the evening of the 26th of June, 1826, being 10 per cent. on the $300,000 worth of Tradesmen's Bank stock sold, and the money thus received was deposited to his credit in that bank on the morning of the 27th of June, as will appear by the accompanying testimony. By reference to the margin of the check book of the Life and Fire Company with the Fulton Bank, there appears to have been a check cut out for this sum of $1490. On such margin is the letter A. and also the amount and date; " $1490, 26th

June." The $23,510 on the memorandum N. being marked "Dr. A," the other transactions mentioned in that memorandum having taken place on the 26th June, and Mr. Reed having received the $30,000 on that day, there can be no doubt that this memorandum refers to the purchase of the Tradesmen's Bank.

The amount of debits on paper N. are $7000 greater than the amount of credits, for which there was a blank left on the memorandum.

Previous to my leaving for Nantucket on the 10th of June, I agreed to make the Life and Fire Company an advance on 2000 shares of Fulton Bank stock; the day I left town, the company sent a list of their payments for the remainder of that month, and requested my checks as a part of the advance on the said Fulton stock to meet such payments. I accordingly sent them the following checks:

Dated 10th June,	$17,500	Brought forward,	$46,000
12th do.	9,000	Dated 20th June,	1,000
13th do.	9,000	21st do.	1,500
14th do.	1,500	23d do.	14,000
15th do.	4,000	24th do.	1,500
16th do.	2,000	28th do.	2,000
17th do.	3,000	30th do.	1,500
19th do.	4,000		
Carried forward,	$46,000		$71,500

Of the above checks, it appears by reference to the Fulton Bank's book, that the following were not presented to the bank until the 26th June, viz.

1	dated the 15th June, for		$4000
1	do.	21st do.	1500
1	do.	24th do.	1500
			$7000

when they were paid, and the money was not deposited in the Fulton Bank to the credit of the Life and Fire Company, while for all the other checks, which I left with them when I went to Nantucket, the money was drawn and deposited to the credit of the Life and Fire in the Fulton Bank. Therefore these $7000 were doubtless used to pay Mr. Reed; but to avoid encroaching on the funds obtained on the Fulton Bank stock for the special purpose of paying debts due on the days the checks bore date, the money was restored and placed on the books of the Fulton Bank, on the 27th and 29th of June, to the credit of the Life and Fire Company. It was procured principally from the sale of Life and Fire bonds by Matthew L. Davis to William Lawton & Co., as appears by comparing the Fulton Bank book and the margin of the bond book with the testimony of Mr. Guion.

Horatio Kingsland, when sworn on the conspiracy trials, said, "that Mr. Barker left ten or fifteen checks dated ahead when he went out of town in June. The dates of the checks were entered in reference to the amount to be paid by the company. The dates were given by the secretary. Witness saw the checks before Mr. Barker went out of town."

By reference to the margin of the check book of the Life and Fire Company, it appears that $1000 was lent the Morris Canal Company, on the 19th June; and by reference to the margin of the check book of the Morris Canal Company, it appears that they returned this $1000 to

the Life and Fire Company on the said 26th June, but its receipt is not entered in the books of the Life and Fire Company, and bond No. 5008 was probably used in connexion with the purchase of the Tradesmen's Bank, as by reference to the margin of the bond book there appears to have been a bond cut out opposite this number. On this margin are the words "M. L. D. be acc't. for," written in pencil by Matthew L. Davis. Bond No. 5007 is dated the 25th June, and No. 5005 was used for $260,000, for this object, and a similar pencil mark made on the margin, as where bond No. 5008 was cut out.

On the margin of the Life and Fire check book, under date of 27th June, is written "A. 24 Eac. 1. S. L. G. 1200," which, it will be seen, means, paid Samuel L. Gouverneur for 24 shares Tradesmen's Bank stock, transferred to as many individuals 1 share each, to qualify them to become directors. The premium of 28 per cent. on this stock having been paid to Mr. Reed the previous evening, these 24 shares were paid for at par, and that being $50 per share, amounted to $1200, the precise amount of said check A., which establishes the important fact, that the said letter A. was intended to mean "Account of the purchase of the Tradesmen's Bank."

Matthew Reed, being called, and asked by Mr. Barker to state more precisely the amount received for premium on the stock of the Tradesmen's Bank sold in 1826, than when formerly examined on this subject.

He answers—The agreement was for 6000 shares of stock, which, at par, amount to $300,000, on which we were to receive 28 per cent. premium:—namely,

4 per cent. the dividend then about to be declared - - - - - - - - - -		$12,000
10 per cent. in cash - - - - - - - -		$30,000
And 14 per cent. in Life and Fire Bonds.		$42,000

And on the 26th of June, 1826, witness did receive from Mr. M. L. Davis the 10 per cent. - - - - - - - - - $30,000

Interest due on the same - - - - -		101.50
Life and Fire Bonds, about -	$41,300	
In notes of the Morris Canal and Banking Company, about -	700	—$42,000

The $30,000 above mentioned, were in notes of different banks in this city, to the best of witness' recollection—viz. U. S. Branch, City, and Fulton.

Being further asked by Mr. Barker—Did some of the stockholders of the Tradesmen's Bank meet at your house on the subject of disposing of their stock as aforesaid: if yea, when, and who were they, and what was done?

He answers—That about the middle of June, 1826, he thinks it was on the evening of the 14th, a number of stockholders met at his house, when he stated to them that he had been offered 24 per cent. and to retain the dividend of 4 per cent. then about to be declared. The payment as before stated, or if we preferred it, (in lieu of the Life and Fire Bonds,) could have the post notes of the Morris Canal and Banking Company, payable on the 15th July, then ensuing; and that he felt it

his duty to submit said proposition to them for their consideration. That he then left the room for a few minutes, and on his return was informed that they had concluded to dispose of their stock, in amount $300,000, including the stock of one other person not then present, each retaining twenty-eight shares, excepting the honourable Richard Riker, who retained thirty shares. They then authorized the honourable R. Riker, Judah Hammond, Esq. and witness, to dispose of our stock in the way and manner before mentioned.

Being asked by Mr. Barker—Are the minutes of the meeting referred to in writing; and if so, are they in your possession, and will you produce them?

He answers—I shall decline answering the question, on the ground that I have interest depending, which may be materially affected.

Nov. 6.—The master ruled that Mr. Reed is bound to answer the question asked by Mr. Barker, on the 5th inst., if the same has a material bearing on the subject under consideration. Mr. Barker states, that it has a material bearing on the paper marked N. filed on the 3d inst.

Mr. Reed then answers, and says, that the minutes inquired about are in writing. and produces a paper which he requires to be re-delivered to him, and which is as follows:

"*Resolved*, the directors here present, will agree to sell their stock in the Tradesmen's Bank at 28 per cent. advance, provided a majority assent thereto.

Resolved, that 6394 shares be sold.

M. Reed, - - -	1522
A. Mann, - - -	325
Mr. Mount, - - -	300
Mr. Schureman, -	225
R. Munson, - - -	220
R. Riker, - - -	480
J. Hammond, - -	425
Mr. Purdy, - - -	295
R. Tillotson, - -	439
Mr. Baker, - - -	310
Mr. Boyd, - - -	603
Mr. Field, - - -	600
Mr. Gouverneur, -	550
Mr. Bowne, - -	100—6394

Resolved, that the above be secured to the respective persons above named, and at the discretion of the following committee.

Resolved, that the surplus of 394 shares be retained by the said directors in equal proportions.

Committee, Alderman Read,
J. Hammond,
R. Riker."

Being asked—In whose hand-writing is the said paper or minute?

He answers—In the hand-writing of Richard Riker, Esq. The persons therein named were all present, except Rodman Bowne, and as to him he cannot speak with certainty. They all agreed to the sale of said stock, he believes, and witness paid over to each of them, individually, the premium received, as before stated. Says Matthew L. Davis called at witness' house, and paid the premium, with the interest thereon.

Being asked—Was not the $101.50 interest paid on a statement exhibited by you at that time to said Davis?

He answers—It was.

Being asked—Had or had not Mr. Davis a package of small notes of the Morris Canal and Banking Company, from which the sum of $700, or thereabouts, was taken in your presence?

He answers—I think he had; and Mr. Davis stated, I think, that there was $1000, which he had brought for the purpose of making change among the parties to whom the bonds were to be distributed.

Being asked—Do you not know that said notes were of the Morris Canal and Banking Company?

He answers—I have no doubt on the subject, but they were such notes.

Being asked—Did you not deposit in the Tradesmen's Bank the $30,101 before mentioned?

He answers—Said sum was deposited in said bank to my credit, and I think by me. It is entered in my bank book, (produced before the Master and withdrawn by consent,) under date of June 27, 1826. The money was received after bank hours of the 26th June.

Being asked—Did not Mr. Davis make any apology when he brought you the money and bonds, for the premium on the Tradesmen's Bank stock, for being so late in the day, and if any, what?

He answers—He observed he should have come earlier in the day, but that he was troubled to get the money from the different banks, so that it should not be traced to the purchaser of the stock. That is, as witness inferred, that after drawing the money from the banks, on the checks he held, he got some of it changed for moneys of other banks.

Being asked by Mr. Hoffman—Do you know, or from what passed did you infer, that the Life and Fire Insurance Company, or Thomas Vermilyea, was the purchaser of the Tradesmen's Bank stock?

He answers—He never considered such company capable of holding such stock, and was then, and has since been under the full belief, that Mr. Eckford was the actual purchaser, and that neither the Life and Fire Company, nor Mr. Vermilyea, was interested at all in the purchase.

REMARKS.

On reference to the books of the Life and Fire Company, there appears to be charged to their interest account, on the 29th June, 1826, $110.58, without any explanation for what it was paid, and a credit on the same day to that account of $9.08, leaving a balance to the debit of their interest account of $101.50, the exact amount which Mr. Reed says he received from Matthew L. Davis, for interest on the Tradesmen's Bank stock sold; and on reference to the check book of the Life and Fire, with the Fulton Bank, there appears to have been a check drawn for $801.50, on the same day on which the money was paid by Mr. Davis to Mr. Reed, which is the exact amount of that interest, together with the $700, which Mr. Reed says he received in small notes of the Morris Canal Company. This $700, with $41,300 received by Reed in Life and Fire bonds, liquidated that half of the $84,000 premium which was agreed to be paid, either in Life and Fire bonds, or the

post notes of the Morris Canal Company; and for this check of $801.50, it is presumed that the small notes of the Morris Canal Company were obtained, as they were to be divided among a great number of persons; and Mr. Talman says, that the Morris Canal Company always paid in their notes when they expected they would go into circulation. On the margin of the check book, where this check was cut out, is the letter A, without any explanation for what, or to whom paid; nor is there any entry of this check in any other book of the Life and Fire Company, except that in which the bank account was kept. In that book, the amount and date only are put down, and the line left blank where the usual explanation is made as to the persons to whom checks are paid, or the object for which they are given. The letter A is, as before stated, also on the memorandum which led to this important discovery; and also on the margin of the check book, where the two other checks aforesaid were cut out, the one for $1490, dated the said 26th June, the other for $1200 on the following day, which were applied towards the payment for the Tradesmen's Bank stock. These two checks are not entered on any other book of the Life and Fire Company, except that their dates and amounts are inserted in the book where that company kept its bank account, and the line opposite each left blank, as in the case of the check for $801.50. On examination of the margin of their check book, the letter A does not appear where any other check had been cut out; nor does there appear to be any account in the ledger of that company denominated A. Mr. Vermilyea says, that when the company paid *usury*, they placed the letter A. on the memorandum thereof, and entered the amount in their books to some account, but what account he knew not. Hence it follows, that the letter A. was affixed to memorandums of transactions for account of the company, which, together with their paying the interest on stock of the Tradesmen's Bank, and charging it to their own interest account, clearly indicate that the Tradesmen's Bank was purchased for the Life and Fire Company.

The other facts disclosed are equally conclusive. Mr. Reed received payment from Mr. Davis, on the afternoon of the said 26th June, in the notes of the United States Bank, the City Bank, and the Fulton Bank. The United States bank notes turn out to have been procured on the checks of Henry Eckford, the City Bank notes partly on the checks of William Lawton & Co., and partly on my checks, advanced as early as the 10th of June, for a different and special object, and the Fulton Bank notes on the checks of the Life and Fire Company, and of the Morris Canal Company.

Mr. Eckford furnished $11,500, for which the Life and Fire issued their check on the Fulton Bank, which was not presented or paid. On the margin of the check book of the Life and Fire Company, was written "H. Eckford, $11,500, 26th June;" and Mr. Eckford drew his checks on the U. S. Branch Bank, for $4200

$3200

$4100

$11,500

which were paid by that bank on the 26th of June.

Morris Robinson, being called upon by Mr. Barker, and asked—Says the following checks, drawn by Henry Eckford, on the Office of Discount and Deposit, New-York, were paid on the 26th day of June, 1826—viz:

1	for $1000
1	3000
1	4200
1	3200
1	4100
1	234.87
1	470.50

November 10, 1828. M. Robinson, *Cashier.*

REMARKS.

By reference to the Fulton Bank book, it appears that on the said 26th and 27th June they paid the aforesaid checks A. drawn by the Life and Fire. By reference to the City Bank books, it appears that they also, on the 26th of June, paid the checks which were given by William Lawton & Co. for bonds sold the Franklin Insurance Company; also $7000 of the checks advanced by me, on the 10th of June, on Fulton Bank stock; and there cannot, when Vermilyea's agency for the Morris Canal, and how he got the 2500 shares of their stock, (see my first letter,) is considered in connexion with the testimony of Mr. Talman, be a question, but that the Morris Canal supplied the Life and Fire with the notes of that bank used on that occasion. Thus it appears, how and from whom the bills of each bank were obtained, which Mr. Reed, in his testimony, describes to have received on the said 26th of June, in payment for the Tradesmen's Bank.

On reference to the numbers of the bonds detailed in the testimony of Messrs. Worthington, Vermilyea, and Guion, on which Mr. Vermilyea raised the $10,010, it will be seen that $9000 are the same that Lawton & Co. purchased for account of the Franklin Insurance Company, and paid for in their checks on the City Bank. If the Tradesmen's Bank had not been purchased for the Life and Fire Company, why did that company refund to Mr. Gouverneur the money he paid Mr. Bucknor, for the 24 shares transferred to as many individuals, one share each, to qualify them to hold seats as directors? why did they give their checks for the money obtained of Mr. Eckford, and of the Morris Canal Company, to pay for said bank? Why did they borrow money of the Franklin Insurance Company, at an interest of more than 30 per cent. per annum, and appropriate it to the same object? And why did the Secretary of the Life and Fire Company fill up bonds and checks signed by General Swift, and left in blank, to be used for the general business of the company, and thus apply their funds for that object, when the company was in the utmost need of money to pay its own debts? all which will appear by the following testimony to have been done. And if he made the purchase for others, with the funds of the Life and Fire Company, why were not such others charged with those funds, and the securities, if any were received therefor, regularly entered on the books of the company? And why was not the compensation for that

service, and for the use of their funds, entered to the credit of the company's profit and loss account? neither of which was done.

Mr. Eckford attended at the office of the Life and Fire Company daily. Mr. Davis swears that the $20.000 was borrowed of the Tradesmen's Bank, immediately after the new election, on the security of Life and Fire bonds, by the authority of Mr. Eckford. Mr. Rathbone swears that Mr. Eckford knew that the Tradesmen's Bank held the Life and Fire bond for $260,000, and directed him to use a part of the stock. Mr. Davis also swore that he never did any thing except he was bid to do so—that he implicitly obeyed the wishes and directions of Mr. Eckford; and Mr. Vermilyea swears that he was always guided by the directions, and never opposed the wishes of Mr. Eckford. And although Messrs. Cox and Gouverneur lent their names to cover the real parties, the one supposing the bank had been purchased for Mr. Eckford, and the other for the Morris Canal Company, yet neither Mr. Cox nor Mr. Gouverneur were permitted to receive a single share of the stock. It was placed in the name of Mr. Rathbone, the partner of Mr. Eckford, and a director of the Life and Fire Company and of the Morris Canal Company, and the bond of the Life and Fire Company for $260,000, given to the Tradesmen's Bank in lieu thereof. The proxies to vote were, as appears by the testimony of Mr. Cox, placed with the Life and Fire Company, and by them transmitted to Mr. Cox, on the morning of the election, by a clerk of the Life and Fire Company, in an envelope, the direction of which was in the hand-writing of that clerk; and it also contained a direction in relation thereto, in the hand-writing of the Secretary of said Life and Fire Company.

All their devices for concealment have at length proved unavailing, as nothing can be more clearly proved than that the Tradesmen's Bank was purchased for the Life and Fire Company, with the aid of Mr. Eckford, its President, and with the full knowledge and approbation of Mr. Vermilyea and Mr. Rathbone, two acting directors; and that Mr. Davis, the Secretary of said Company, conducted the negotiation, and that it was paid for with the funds of that Company, and the names of Messrs. Governeur and Cox were borrowed and used for the purpose of concealment. And yet all these persons, connected with the Life and Fire Company, sat in court and saw me about to be sacrificed for their conduct, knowing me to be both innocent and ignorant, and neither of them offered the least explanation; and Mr. Eckford, from whom I had expected a different course, refused to give testimony, although subpœnaed by me, and in court when the false and fraudulent use was made of the Rathbone papers by the District Attorney.

Richard Riker, being called by Mr. Barker, and asked—Was Matthew Reed authorized by yourself and others to sell a certain number of shares in the Tradesmen's Bank, in 1826?

He answers—I authorized Mr. Reed to bind myself; I do not know what others did.

Being asked—Was such authority in writing?

He answers—I do not recollect; I am under an impression it was in writing; at all events I was bound by my promise.

Being asked—Was a contract for the sale of that stock reduced to

writing, between Matthew Reed, purporting to be of one part, and certain other persons of the other part?

He answers—I never knew of such a thing, until after the difficulties in the bank arose; then Mr. Reed showed me such a paper.

Being asked—Did Mr. Reed deliver said paper to you?

He answers—Mr. Reed has assured me he did. I may be mistaken as to its being a contract for the sale of the stock.

Being asked—Will you search for said paper, and if you find it, will you leave it with the Master?

He answers—I will search for it, and will inform the Master.

Being shown the copy of certain resolutions, produced by Mr. Reed, purporting to be the record of certain proceedings at Mr. Reed's house, and entered on the Master's minutes of the 6th inst. and asked—Did you attend said meeting, and did the persons therein named also attend that meeting, and was the object of the meeting as specified in said paper?

He answers—I did attend at Mr. Reed's; it was probably the meeting referred to, and most, if not all the gentlemen named were present, and it related to the sale of the Tradesmen's Bank stock.

Richard Riker, being again called, and asked—Have you searched for the paper, referred to by you in your former examination, as a contract for the sale of certain stock of the Tradesmen's Bank, and have you found it?

He answers—He has searched for it, and he has found it; that he believes it to be the paper referred to, and has it now with him; he received the paper, as he verily believes, from Matthew Reed, late President of the Tradesmen's Bank.

Mr. Barker then asked if he would produce it, to which the said witness answered—That he received it from Mr. Reed in confidence, and, as witness understood, for the purpose of advisement, and as his *counsel;* and he, witness, therefore respectfully submits to the Master, whether he shall return said paper to Mr. Reed, now here present, to whose inspection the witness has submitted the paper, or whether he shall lay it immediately before the master.

Being asked by Mr. Barker—Did not Mr. Reed inform you that he had no objection to your producing said paper before the Master, as an exhibit in this cause?

The witness answers—That Mr. Barker, in the presence of the witness, and of Mr. Murray Hoffman, and of Mr. Selden, did ask, in substance, of Mr. Reed, whether he had any objections that said paper should be produced by witness, to which Mr. Reed replied, in the presence of said persons, that he had looked at the papers and had none.

The Master ruled that the witness must either produce such paper, or deliver it to Mr. Reed; whereupon witness delivered forthwith said paper to Mr. Reed.

Mr. Reed being called, then produced said paper marked R. R. by said Richard Riker—in words following:

Paper R. R.

This is to certify, that I, Matthew Reed, this day sell to Samuel L. Gouverneur and Samuel Cox, six thousand shares of the capital stock

of the Tradesmen's Bank, at one hundred and twenty-eight per cent. for the following payments, viz.: ten per cent. cash, on or before the 26th instant; also fourteen per cent. at the same time, in Life and Fire bonds, or post notes of the Morris Canal and Banking Company, payable on or before the 15th day of July next ensuing, and four per cent., being the dividend on the 1st day of July next, and the balance, say one hundred per cent., on or before the fifth day of July next, or that notes be substituted to relieve notes given for loans on said stock, by myself and others, whom I may hereafter designate; and it is further agreed, that when the two first above mentioned payments of twenty-four per cent. is made, that I furnish irrevocable proxies for the said purchaser, Samuel Cox, to vote on the said six thousand shares, at the next election for directors of the said bank, say on the 3d of July next, and also a power to transfer said stock, on the fifth day of July, provided the whole of the foregoing payments, in all, one hundred and twenty-eight per cent. has been complied with.

Now we, Samuel L. Gouverneur, and Samuel Cox, do agree to the above, in each of its details, and by these presents, do firmly agree with Matthew Reed, faithfully to perform the payments as before mentioned, binding ourselves, our heirs, executors, administrators, and assigns.

In testimony whereof, we, jointly with him, set our hands and seals, this 21st June, 1826.

Mw. Reed, (L. S.)
Saml. L. Gouverneur, (L. S.)
Samuel Cox, (L. S.)

Mem.—Agreement made before signing. Interest, at seven per cent., to be allowed on the whole of the payments, from the fifteenth day of June instant.

Mw. Reed, (L. S.)
Saml. L. Gouverneur, (L. S.)
Samuel Cox, (L. S.)

Received, New-York, 26th June, 1826, on the above contract, thirty thousand dollars, it being ten per cent., and bonds and cash, forty-two thousand dollars, it being fourteen per cent. one hundred and one dollars and fifty cents interest on the first ten per cent., and also on the four per cent. dividend.

Mw. Reed.

Andrew S. Barker, being duly affirmed on the part of the defendant, Jacob Barker, and examined by him, says—That he is the son of the said Jacob Barker. Says he left New-York on Saturday, the 10th June, 1826, with his father, mother, and some other of their children, for Newport, in the state of Rhode Island; they went in a steam-boat, and he thinks it was the Connecticut, Capt. Comstock. From Newport they all went to New-Bedford by stage, and from thence by water to Nantucket. His father and mother remained at Nantucket until about June 20th, 1826, when they departed from Nantucket for New-Bedford, he thinks, leaving witness at Nantucket. Witness is confident

as to the periods above mentioned, because he, the witness, remained at Nantucket, to attend the great sheep shearing at the island, which took place the latter part of said month of June, and after his father left them, as above stated.

Strong Sturges, being called by Mr. Barker, and sworn, says—That Mr. Barker left New-York in June, 1826, on or about the tenth of that month, it was not after the tenth, for Nantucket, via Newport, in the steam-boat Connecticut, and returned on or about the 22d of the same month.

F. G. Halleck, being called by Mr. Barker, and sworn, says—Mr. Barker left New-York for Nantucket on the 10th June, 1826, and was gone about a fortnight.

REMARKS.

Here it will be seen, that I was absent on a visit to Nantucket from the 10th to the 22d of June; that the first meeting on the subject of the sale of the Tradesmen's Bank was on the evening of the 14th of June, where the propositions were made, acceded to, and a committee, consisting of Messrs. Riker, Reed and Hammond, appointed to carry the same into effect. That on the 19th of June, the power was transferred from the said Committee to Matthew Reed, and the contract was signed on the 21st of June.

Nov. 20.—Matthew Reed again called by Mr. Barker, and asked—Do you hold the written authority of the parties to the sale of the Tradesmen's Bank, heretofore testified to? If yea, will you produce it?

He answers—I was authorized, in writing, to sell the said stock in the Tradesmen's Bank, by certain individuals. I consider it a private paper; I cannot produce it, unless ordered by the Master so to do. Master calls upon Mr. Barker, to make affidavit of the materiality of said paper, which was done and filed, in words following:

IN CHANCERY.

Henry Barclay, and others, vs. *Jacob Barker, and others.*

State of New-York, ss.—Jacob Barker, the above named defendant, being duly affirmed, saith—that a certain paper, referred to by Matthew Reed, as being a written authority from certain persons, to sell stock of the Tradesmen's Bank, is, in affirmant's opinion and belief, material to the matters now in question before the Master.

JACOB BARKER.

Affirmed, this 20th Nov. 1828, before me,

THOS. BOLTON, *Master in Chancery.*

The Master rules it must be produced.

The paper is produced and filed, marked M. R.

Being asked—Are the signatures in the hand-writing of the persons whose names appear to said paper?

He answers—They are.

Being asked—Are the word and signatures, "New-York, 19th June, 1826," in the hand-writing of Richard Riker?

He answers—I think it is, and was written at the time it bears date. I believe I saw him write it.

Paper M. R.

We, the subscribers, do hereby authorize Matthew Reed to sell and dispose of our stock in the Tradesmen's Bank, the number of shares set opposite our respective names, at twenty-eight per cent. above par value, with interest, from and after the fifteenth day of June (instant.) And we do agree to furnish proxies for the purchaser to vote on the same at the next election for directors of said bank, which election is fixed for the third day of July next. Payments we agree to accept as follows, viz. ten per cent. on the 26th day of June (instant) cash; fourteen per cent. same day in Life and Fire bonds or post-notes of the Morris Canal and Banking Company, payable on or before the fifteenth day of July next ensuing, and four per cent., the dividend on the stock, pabable on the first day of July next, and the balance one hundred per cent., on or before the fifth day of July next, or that notes be substituted in every and all cases to relieve our notes when given for loans on said stocks; and that on the payment of the two first mentioned above sums, say making twenty-four per cent., that we do agree to furnish for the purchaser irrevocable proxies to vote on the stock, and a power to transfer the same on the fifth day of July next, when the last instalment of one hundred per cent. as above mentioned shall have been complied with. *New-York, 19th June, 1826.*

NAMES.	Original No. of Shares.	Shares returned.	Shares sold.	Amount at par.	10 per cent.	14 per cent.	4 per cent.	28 per cent	128 per cent.
Asa Mann, ...	325	28	297	14850	1485	2079	594	4158	19008
Gilbert S. Mount, . .	300	28	272	13600	1360	1904	544	3808	17408
Nicholas Schureman, .	225	28	197	9850	985	1379	394	2758	12608
Reuben Munson, . .	220	28	192	9600	960	1344	384	2688	12288
R. Riker, ...	480	30	450	22500	2250	6150	900	6300	28800
J. Hammond, . . .	425	28	397	19850	1985	2779	794	5558	25408
Samuel Purdy, . . .	295	28	267	13350	1335	1869	534	3738	17088
Robert Tillotson, . .	439	28	411	20550	2055	2877	822	5754	26304
David Baker, ...	310	28	282	14100	1410	1974	564	3948	18048
J. J. Boyd, ...	603	28	575	28750	2875	4025	1150	8050	36800
John Field, ...	600	28	572	28600	2860	4004	1144	8008	36608
Samuel L. Gouverneur,	550	28	522	26100	2610	3654	1044	7308	33408
Rodman Bowne, . .	100	28	72	3600	360	504	144	1008	4608
	1522	28	1494	74700	7470	10458	29 8	20916	95616
	6394	394	6000	300000	30000	42000	12000	84000	384000

REMARKS.

By comparing the phraseology of the proceedings of the meeting of the evening of the 14th of June, which appointed the Recorder one of the committee, with the phraseology of the aforesaid power, it will be seen that the committee had, on the 15th of June, settled all the detail of the bargain pursuant to the discretionary power vested in them by the resolutions. But as the contract was to be signed and delivered to third parties, the Recorder withheld his name, and it was determined that the contract should be signed by Mr. Reed only, for account of such persons as

should be thereafter named. (See the Contract R. R.) But Mr. Reed, it seems, would not put himself forward singly until the others had all subscribed their names approving of the whole detail. This is manifest from the phraseology of the power which bears all their signatures: first, because it left nothing for discussion or negotiation, and exactly conforms to the terms of the bargain; and, secondly, that when they come to divide the bonu and receipt for the money, such receipt is written on the back of the power, in which they describe it as "the contract." The phraseology of the minutes of the meeting, as kept by the Recorder, cannot but attract attention. A portion of the directors were excluded from the meeting, and yet those that attended are described as directors, and not as individuals or stockholders, so as for it to appear, if they should be detected, that they were doing some great good to the institution confided to their guardianship. But as soon as the work is done, and the fruit ready for division, it snugly passes into their own pockets, and we hear no more about their being directors.

We, the undersigned, received of Matthew Reed, on the within contract, the several sums and amount as annexed our respective names.

New-York, 26th June, 1826.

N. B. Except the 4 per cent. dividend.

NAMES.	10 per cent.	Int. on 10 per cent 11 days	4 per cent.	Int. on 4 per cent 16 days.	Total 10 per cent. Int. do 11 days. Int. on 4 per cent. 16 days.	
Asa Mann,	1485	3 17	594	1 86	1490 3	2079
Gilbert S. Mount,	1360	2 92	544	1 70	1364 62	1904
Nicholas Schureman,	985	2 11	394	1 22	988 33	1379
Reuben Munson,	960	2 5	384	1 21	963 26	1344
R. Riker,	2250	4 82	900	2 80	257 62	3150
J. Hammond,	1985	4 25	794	2 47	1991 72	2779
Samuel Purdy,	1385	2 86	534	1 66	1389 52	1849
Robert Tillotson,	2055	4 40	822	2 64	2062 4	2877
David Baker,	1410	3 2	564	1 74	1414 76	1974
J. J. Boyd,	2875	6 14	1150	3 57	2884 71	4025
John Field,	2860	6 12	1144	3 56	2869 68	4004
Samuel L. Gouverneur,	2610	5 58	1044	3 25	2618 83	3654
Rodman Bowne,	360	0 77	144	0 36	361 13	504
	7470	15 96	2988	9 29	7495 25	10458
	30000	64 17	12000	37 33	30101 50	42000

George W. Gantz, sworn on the part of the complainants, says—That he was clerk of the Life and Fire Insurance Company in 1826, from the beginning of February to the time of the failure of said Company.

Being examined by Mr. Barker, and asked to look at the blotter of said Company, under date of 29th June, 1826, and say whether interest account is debited there $110.58, without an explanation?

He answers—It so appears by the said book; and there is another entry under the same date, in the same book, crediting interest $9.08. The said entries are in witness' hand-writing.

Being shown the check book, and desired to look at the margin, where a check has been cut out, under date of "26th June, letter A. $301.50," another under date of "26th June, letter A. $1490." another "27th June, letter A. $1200," and asked if the writing and figures are his hand?

He answers—The first and second is in his hand-writing; and as to the third, the words, June 27th, and figures $1200. are in Mr. Kingsland's hand-writing. Cannot say in whose hand the letter A., in the last check, is.

Being desired to look at the blotter, and say if the above checks are there charged to any account.

He answers—There does not appear to have been any entry as to them. The same was the case with many other checks, memorandum checks, &c., nor does he know of these checks being entered in any other book. Does not know any thing about the object for which the checks were given, nor why they were not entered. Does not know who furnished the money to pay for the Tradesmen's Bank stock in June, 1826. Does not know what the letter A. refers to in the memorandum on the check book.

REMARK.

It will be seen by Mr. Gantz's testimony, that the result of the entries made on the 29th June, 1826, to the debit and credit of the interest account on the Life and Fire Bonds, left $101.50 to the debit of their interest account, which was the exact amount paid Mr. Reed by the Secretary of that Company on the evening of the 26th of June; and Mr. Kingsland, another clerk, swore that the Company usually made the entries a few days after the transactions took place; which, with the fact that a check was given, and the margin marked A. on the day that interest was paid for $301.50. the two accounts. say the interest and the Morris Canal notes to make change in distributing the bonds, which check was not entered, leaves no room to doubt that this charge of interest was intended to apply to the money paid Mr. Reed for the interest aforesaid.

Horatio Kingsland being again called. and in reference to the entries of the company generally, says—The entries in the cash book were made a few days after the transactions took place, and sometimes on the same day, just as I had leisure.

James T. Talman. being called by Mr. Barker, and shown the check book of the Morris Canal and Banking Company, on the Fulton Bank, and being desired to describe an entry in the margin thereof, under date of 26th June, 1826?

He answers—He finds thereon written by himself, in words following,

1826
June 26 491
returned draw
Life and Fire $1000

the words "returned Life and Fire" are obliterated, and the word "draw" appears to have been written in place thereof. The figures "491" means the number of the check. The word "draw" means that the check was to be settled in the petty cash account kept by himself.

Being asked—What description of bank notes he paid from said draw?

He answers—When he thought there was any probability of the notes going into circulation, he always paid out Morris Canal and Banking Company notes.

Cross examined—Says, that from the entry on the margin of the check book of the 26th of June before stated, he has no doubt that the one thousand dollars was money returned on that day to the Life and Fire Company, for a previous loan from that company to the Morris Canal Company. The money was probably handed to Matthew L.

Davis, or one of the clerks of the Life and Fire Company, as they would most probably be the persons to call for it. He has no recollection on the subject—Has no remembrance of Vermilyea having any thing to do with that transaction.

By Mr. Barker—Deponent was in the habit of keeping a bundle of Life and Fire bonds for Vermilyea in his iron chest for safe keeping; that he used to furnish Garniss and others with them, and receive the proceeds for Vermilyea's account, and pass such proceeds to his credit in the memorandum cash account, kept in the margin of the check book of the Morris Canal and Banking Company, but not in the ledger or any other book.

Samuel Cox again called by Mr. Barker, and desired to look at the paper marked R. R., filed on the 19th inst., and asked—Did you sign said paper?

He answers—I did.

Being asked—Was the stock therein mentioned purchased in part or in whole on your account?

He answers—It was not.

Being asked—At whose instance did you sign that contract?

He answers—I am not very positive, but I think I am not mistaken when I say it was at the instance of Mr. Reed, the president of the bank, though I have a faint recollection about it. It might have been at the instance of Mr. Governeur, or Mr. Davis, though I think it was Mr. Reed.

Being asked—Did Matthew L. Davis ever request you to sign that paper?

He answers—My memory is very faint on that subject. Mr. Matthew L. Davis once, I recollect, with Mr. Reed or Mr. Gouverneur, asked me to sign a paper relating to the stock of said bank. It might have been the paper in question. One of said persons, and I think it was Mr. Davis, assured me it was mere matter of form; but I have no recollection of complying with their request at that time. I had no interest in the matter; and my having signed said paper at any time had entirely escaped my recollection; and I did not recollect that I had signed it, until I saw my signature thereto last evening, in the master's office.

Being asked—Has Samuel L. Gouverneur ever stated, in your presence or hearing, that he was not interested as purchaser in said stock?

He answers—I do not recollect ever to have heard Mr. Gouverneur say whether he was or was not interested therein.

Being asked—Was any portion of this stock transferred by the sellers, and to whom?

He answers—About 4800 shares were transferred to W. P. Rathbone; but whether directly or not, he cannot say.

Being asked—Did you mention to Jacob Barker that you had signed, or was a party to a contract for the purchase of the Tradesmen's Bank, or the stock thereof, before mentioned?

He answers—Never to my recollection or belief.

Being asked—Did you ever negotiate about, or settle the price or terms as purchaser or seller of said stock?

He answers—I did nothing in the business, except to sign the paper, when asked, as before mentioned.

Being asked—Did you ever vote on the proxy of the sellers, at the election for directors of said bank, on or about July 3d, 1826—and if so, from whom did you receive the list of directors for whom you voted?

He answers—I did so vote. The proxies were brought to me by a boy from the office of the Life and Fire Insurance Company, enclosed in an envelope, directed to me as cashier of the bank, in the hand-writing of Matthew L. Davis. Matthew Reed, I believe, furnished me with a list of the names to be voted for, which I think I had printed. I wished to have Henry Remsen's name on said list; it was objected to, and I think by Matthew L. Davis. It was not done. Mr. Davis told me some persons interested in said stock objected to Mr. Remsen.

Being asked—Do you know for whom said bank was purchased, or who furnished the money to pay for it?

He answers—I do not know. Mr. Davis appeared to be the agent.

Examined by Mr. Hoffman. Being asked—Had you any authority from any officer or director of the Life and Fire Insurance Company to execute the paper marked R. R. before mentioned, or to enter into any such contract as therein contained?

He answers—I had no authority from any officer or director of the Life and Fire Insurance Company as such. The Life and Fire, as company concern, were not named.

Being asked—Do you know, or did you at the time of such contract know, or have you any reason to believe, that the said stock of the Tradesmen's Bank was purchased for the use, or on the account of the Life and Fire Company?

He answers—I had not, at the time of such contract, the most distant idea thereof. I thought it was the Morris Canal and Banking Company—I was led to infer so by Matthew L. Davis. I do not know on whose account said bank was purchased. I at present incline to the opinion that it was purchased for the Life and Fire; because, among other circumstances which induce me to believe so, there appears to be a memorandum on one of the books of the Life and Fire Company, in the master's office, showing that the Life and Fire Company paid the interest.

Samuel L. Gouverneur, being again called by Mr. Barker, and shown a paper marked R. R., also a paper marked M. R. says, that the signatures are genuine, but that in no case, nor under any circumstances, had he any interest whatever in the purchase of the stock of the Tradesmen's Bank, therein mentioned; on the contrary, he sold his stock with Mr. Riker, Mr. Hammond, General Mount, and the other gentlemen named, and received the same consideration in every respect which they received. That it was represented to him that the name of Mr. Cox was to be used in the purchase, and as Mr. Reed was not willing to take Mr. Cox, he (Mr. G.) was called upon and requested to guarantee that Mr. Cox would faithfully fulfil the trust; that having known Mr. Cox, and believing him then, as he now believes him to be,

a perfectly honest man, he (Mr. G.) did consent to allow his name to be used. That he believes Mr. Cox was the agent of others, and not otherwise interested, and did faithfully do what he had engaged to do. Who made, whether Mr. Davis, Mr. Reed, or Mr. Rathbone, the application to Mr. Gouverneur, he does not distinctly remember. He (Mr. G.) further states, that he never entertained a doubt, at the time, that the purchase was made by a fully responsible principal; that he had full and unlimited confidence, and believed that it would finally promote, rather than in the least degree injure, the interest of the institution, as it would be placed in hands fully able to sustain it; and on all occasions in reference to any act or acts of this witness, he avers that it was this confidence which induced him to do them.

Mr. Barker having asked—Who do you believe the principal to be?

He answers—He did believe, as he has testified in court, that it was Henry Eckford, whom he considered as fully competent, in moneyed ability, to make the purchase, and in standing, to sustain it to the interests of the institution. The list of directors was furnished by Mr. Davis, and were voted for by Mr. Cox. The shares of stock transferred by Mr. Bucknor, to different persons, one share each, to be voted for as directors, were part, as witness believes, of the general sale, and paid for by Mr. Davis. He, witness, paid Mr. Bucknor, who had lent money on them. He, witness, always believed that Mr. Davis, in negotiating the purchase, was only an agent, which he inferred from all the circumstances of the case, and being informed by Mr. Reed so. He, witness, never had any conversation with Mr. Barker on the subject, at the time, nor for some time after.

He did not believe, and has no reason to believe, that Mr. Barker was in any degree interested in the purchase or knew of it. Witness was a director of the Morris Canal, and a member of the Finance Committee, and that to his knowledge, they had no interest in the purchase of the Tradesmen's Bank.

Witness being asked—Is he a sufferer by the failure of the Life and Fire?

Answers—To the amount of about $15,000.

Thomas Vermilyea, called by Mr. Hoffman. Being asked—Do you remember selling certain bonds of the Life and Fire Company, on or about the 26th June, 1826, amounting on their face to $11,000—and if yea, what sum did you receive for the same; and if received, did you pay such sums into the company?

He answers—I sold, on or after the 24th of that month, and by the 26th or 27th, $11,000 in bonds, for which I received $10,010, which sum I paid over to the Life and Fire Insurance Company, to be passed over to my credit. Says he has no memorandum of his own of the numbers of said bonds, which he knows of at present. Upon a reference to the bond book of the Life and Fire, he finds eleven bonds from No. 4907 to 4917 inclusive, of $1000 each, charged to him, and dated June 24th and 26th, which probably are the same.

Being asked—To whom did you sell those bonds?

He answers—I cannot tell positively, but I believe it was to Mr. Lawton—I think Charles Lawton: it may however be William Lawton.

Being cross-examined by Mr. Selden, and asked—Are not the letters W. L. in the margin of said bond book, where the bond No. 4907 appears to have been cut out?

He answers—Yes.

Being asked—Did you or did you not receive a check or checks on the City Bank, and whose, or bills of said bank in payment for said bonds?

He answers—I cannot recollect.

Being asked—Did you hand the money or checks so received to Mr. Davis?

He answers—I do not recollect whether I handed them to Mr. Davis or Mr. Kingsland; I think it was one of them.

Being asked—To what use was said money or checks applied?

He answers—I must refer you to the Secretary and books of the company for the information.

Being asked—Was said money or checks entered on the books of the company?

He answers—I have never examined, and I do not know.

Being asked—What is your belief on this subject?

He answers—I think it ought to be to my credit.

Being asked—Do you think it does appear to your credit on the books of the company?

He answers—I have never examined.

Being asked—Do you believe it is to your credit on the books of the company?

He answers—I do not know whether it is or not.

Being asked—Was the said money, to your knowledge or belief, ever deposited by the company to their credit in any bank?

He answers—I must refer you to the secretary, the clerks, and the books of said company; I do not know.

Being asked to look at the paper marked N., filed November 3d, 1828, and asked—In whose hand-writing is said paper?

He answers—I believe it is in the hand-writing of Matthew L. Davis.

Being asked—Do you believe that the words "Cr. V. $10,010," means credit Vermilyea that sum for said bonds?

He answers—Yes, I should think it did.

Being asked—Do you believe that the words " " E. $11,500," means credit Eckford that sum?

He answers—I do not know any thing about it; but I think it is probable that it does.

Being asked—Does the check referred to in the margin of the check book of the Life and Fire Insurance Company, under date of June 26th, for $801.50, marked A., paid to the Morris Canal and Banking Company, pay in part for $1,000 borrowed of them in small notes, on or about the said 26th day of June, and which said $1,000 was handed to Mr. Davis, to be used in settling for the purchase of the stock of the Tradesmen's Bank?

He answers—At present I cannot bring to my mind any circumstance whatever, connected in any way with this question.

Being asked—For what reason are the entries for checks, one for

$301.50, above mentioned, one for $1490, under date of June 26th, also marked A., and one for $1,200, under date of June 27th, also marked A., left blank in the account book with the Fulton Bank, while the other checks on said bank, entered in said book, are filled out to some account?

He answers—The Fulton Bank book was kept by, and in the handwriting of one of the clerks of the Life and Fire Insurance Company. I have no recollection of seeing those entries before this moment—there is no reason, within my recollection, why they were left blank.

Being asked—Do you know of the margin of any other check marked A. in the check book, or any other entry of checks in said account book, entered in blank?

He answers—The margin of the check book was kept by Mr. Davis and Mr. Kingsland generally; the Fulton Bank account book by Mr. Kingsland. If there are any other entries of this kind, they are unknown to me.

Being asked to look at the aforesaid exhibit marked N., and say whether the words "Dr. A. $28,510" does not apply to the same account as the letter A. on the aforesaid checks, do you know or believe?

He answers—I do not know they apply to the same; I do not believe they do.

Being asked—For what reason do you not believe so?

He answers—Because of those letters A., one is a Roman character like a printed A., the other is written *a*; and as they appear to designate some private account or transaction, I think if they had been one transaction, the letters would have been made exactly alike.

Being asked—Is there any account on the books of the Life and Fire Insurance Company, designated by the letter A., or is there more than one?

He answers—I was not the book-keeper of the company, and must refer you to those books. There were some instances in which that letter had been used as a memorandum with the accounts attached to it, for *usury* paid for account of the company, if my memory serves me. I think such losses have been entered in the books, but I do not remember under what title.

REMARK.

It will be seen that I could not get much information from the testimony of Mr. Vermilyea; he was produced as a witness by the complainants—he refers to the books and papers of the company; they were before the master, and there was no entry on the books of the $10,010, received from Vermilyea; no entry of the Dr. $28,500, on paper N.; no entries of the issuing of the bonds for 20,800, described on the paper Z., which were paid in part for the Tradesmen's Bank; no entry for the interest endorsed to have been paid on such of these bonds as were produced.

But the letter A. was on the margin of the check book where the check S. L. G. for $1200 was cut out on the 27th of June, to pay for the said 24 shares of stock transferred to as many individuals; one share

each to qualify them to hold seats as Directors; it is on the margin of the check book where the check for $801.50 was cut out, to pay the interest on the premium on the 6000 shares of Tradesmen's Bank stock, together with the $700 paid to make change, in distributing the Life and Fire bonds among the sellers of the bank. It is on the memorandum N., which says, "Dr. A $28,510," on which memorandum is also mentioned the money furnished by Mr. Eckford and by Mr. Vermilyea. And it is also on the margin of the book where the check was cut out for $1,490, and used to make up with the said $28,510 the $30,000 received from Mr. Davis by Mr. Reed. And all these transactions, including the payment for the bank, took place on the 26th and 27th of June; and the letter A. does not appear to be placed on any other book or memorandum in possession of the receivers. Therefore, it seems impossible to doubt, but that the aforesaid papers marked A., all refer to the purchase of the Tradesmen's Bank, although Vermilyea swears that he thinks that the letter A., on the memorandum, and the letter A., on the margin of the check book, do not refer to the same account, for reason that the form of the letter was different. When formerly examined, (see his testimony in my second letter, page 27,) he says, *I do know how the advances were made, and by whom made, to purchase the Tradesmen's Bank;* he therefore knew whether or not they did apply to the same account; and, consequently, he had no right to form any opinion inconsistent with that knowledge. The reason he assigned for his belief, would not, in my opinion, warrant any person totally ignorant of the matter, much less one who knew the facts, in forming the opinion that the letter A., on several pieces of paper, made at different times, at different places, and by different clerks, did not refer to the same account.

Frederick A. Guion, being called by Mr. Barker, sworn and examined, says, that he is now, and was through the year 1826, one of the firm of William Lawton & Co. That they, on 24th June, 1826, purchased and paid $4,550 by check on the City Bank, for five Life and Fire bonds, Nos. 4908 to 4912 inclusive; and on the same day, one Life and Fire bond, for which they gave their check for $910 on the City Bank, the said bond being No. 4907. And on the 26th June, they purchased five Life and Fire bonds of $1000 each, Nos. 4913 to 4917 inclusive, and paid therefor $4,550 in their check on the City Bank; and on the 29th June, they purchased of Matthew L. Davis, five Life and Fire bonds, each for $1000, from Nos. 4942 to 4946 inclusive, and paid therefor $4,550 in their check on the City Bank. From whom the other parcels above mentioned were purchased, he does not now recollect.

John Worthington, being called by Mr. Barker, and sworn, says, that he is now, and was, during the whole of the year 1826, secretary of the Franklin Fire Insurance Company; that the said company purchased, through William Lawton & Co., three Life and Fire bonds, Nos. 4909, 4910, 4911, each for $1000, and paid them therefor on the 24th of June, 1826, the sum of $2737.50; that said Franklin Company also purchased, through said William Lawton & Co., on the 26th day of

June aforesaid, the following bonds: 4907, 4913, 4914, 4915, 4916, 4917, for $1000 each, and paid on the 26th June therefor, $5476.33; and also purchased, through said William Lawton & Co., on the 30th of said month of June, four other bonds, 4942, 4943, 4944, 4945, for which a check was given on said day for $3652.66; and that it was usual for said Franklin Company to allow said Lawton & Co. brokerage for such purchases, and he has no doubt, brokerage was allowed in the above purchases, and included in said payments; that William Lawton, of said firm, was a director of said Franklin Company, and member of the Finance Committee thereof.

REMARKS.

By a comparison of the testimony, it will be seen that the dates and numbers mentioned by Mr. Worthington, agree with those on the bonds sold by Vermilyea to raise the $10,010 on paper N.; and as this money never was deposited in any bank to the credit of the Life and Fire, and never entered in their books, it follows that the money obtained from the Franklin Insurance Company, was applied to the purchase of the Tradesmen's Bank, without being incorporated with the general funds of the Life and Fire.

Matthew Reed being again called and examined by Mr. Barker, and asked, whether Samuel L. Gouverneur, or Samuel Cox, took any part in the negotiation for the purchase of said stock—Witness knew of no negotiator but Matthew L. Davis, who said to deponent, that he, Davis, had no interest therein, not one shilling; and he gave witness to understand, that he was acting for Henry Eckford, as witness, in his former examination, has explained. Witness does not know, and has not at any time believed, that either Cox or Gouverneur had any interest in said purchase of stock; the stock was not, on the completion of the bargain, transferred to either of those gentlemen, but to Mr. Rathbone, the partner of Mr. Eckford. Being asked—Was the stock all delivered in pursuance of said contract? He answers—About 1200 shares were not delivered, Mr. Davis having remarked, as they were hypothecated, or he wished them to remain so for the present.

Being asked—Have you any list of bonds you received on that occasion, or any part thereof? If yea, will you furnish the same?

He answers—I have a list of a few of them; the number and amount in figures, in the hand-writing of Matthew L. Davis, which is now produced as follows:

No.	50	$2000
	4590	1000
	4591	1000
	2480	1000
	2481	1000
	2484	1000
	2483	1000
	2485	400
	Cash	58
		$8458
	2482	2000
		$10,458

Being asked—Did not Mr. Maxwell furnish you with further particulars about the said bonds? He answers—That he lodged in the Tradesmen's Bank, his portion of the Life and Fire Bonds received on account of the premium on the stock of that bank, and that at his request, the clerk of Mr. Maxwell procured a list of those bonds, which witness understood he obtained from the books of the Tradesmen's Bank, through their counsel Mr. King; and witness now produces a paper, which he believes to be the said original list, which is in the words and figures following:

No. 2480, for $1000, six months from Jan. 16, 1826, to H. Kingsland, J. S
2482, .. 2000, do. do. 17, .. do. ..
2483, .. 1000, do. do. 17, .. do. ..
2481, .. 1000, do. do. 17, .. do. ..
4591, .. 1000, five do. March 15, .. do. ..
4590, .. 1000, do. do. 15, .. do. ..
50, .. 2000, three years from Aug. 2, 1823, to N. Blossom, H. E.
2485, .. 400, six months from Jan. 18, 1826, to H. Kingsland, J. S.
2484, .. 1000, do. do. 18, .. do. ..

Horatio Kingsland, being again called by Mr. Barker, and shown a paper marked Z., now filed, in words and figures following:

Paper Z.

No. 2870,	900,	G. S. Mount.
2871,	300,	N. Schureman.
2872,	300,	R. Munson.
2488,	1100,	R. Riker.
2489,	700,	J. Hammond.
2490,	800,	S. Purdy.
2491,	800,	R. Tillotson.
2099,	1000,	J. J. Boyd.
2098,	900,	D. Baker.
2095,	2500,	J. Field.
2100,	1500,	
2101,	1500,	S. L. Gouverneur.
2102,	1000,	
2491,	1100,	
2480,	1000,	M. Reed.
2481,	1000,	
2482,	2000,	
2483,	1000,	
2484,	1000,	
2485,	400,	
	20,800	

And being asked in whose hand-writing it is?
He answers—It is in the hand-writing of Matthew L. Davis.

Being asked to look in the book of bills payable of the Life and Fire Company, and see whether bonds of those numbers are recorded as issued, to whom, when, and if paid, when paid?

He answers—The record is in the hand-writing of Mr. Blossom and Mr. Furman, clerks at the time in the Life and Fire Insurance Company—they are both dead; by which record, it appears, that bonds from No. 2870 to No. 2872 inclusive, were issued on the 8th July, 1825, to Antoine Malepar; bonds No. 2488 to 2491, were issued on the 11th May, 1825, to Trenton Bank; bond No. 2098, on the 2d March, 1825, to Jona. L. Brewster; bond No. 2099, on the same day, to N. G. Ingraham, and bond No. 2095, on the 1st March, 1825, to A. Malepar; bonds No. 2100, 2101, and 2102, on the 2d March, 1825, to Trenton Bank; bond No. 2480, on the 10th May, 1825, to Robert Nichols; bond No. 2481, on the same day, to Daniel S. Griswold; bond No. 2482, 2483, and 2484, on the same day, to Trenton Bank, and bond No. 2485, on 11th May, to Jona. L. Brewster, all of which were entered paid, prior to the 1st January, 1826, excepting three, one of which is entered paid 7th January, one on the 10th February, 1826, and the other became due on the 2d September, 1825, and entered paid without any date. If the paper marked Z. refers to Life and Fire bonds, it is not to the aforesaid bonds; there is no entry of such bonds referred to by that memorandum, and I have no knowledge of such bonds having been issued.

Being shown the margin of the bond book of the Life and Fire Insurance Company, where bond No. 5008, appears to have been cut out, and asked to describe the writing and figures thereon.

He answers—"M. L. D. be acct. for," are written on said margin in pencil, by Matthew L. Davis, and the number 5008, is written there by Mr. Gantz; there is no other writing or mark on said margin; it was the practice of the Company to keep a record of the bonds issued in their bill book, in regular succession; this book was written up from the margin of the bond book; Mr. Gantz recorded this number, but left the residue of the line blank, until the entry should be made on the margin of the bond book; no notice of the bonds mentioned on the said paper, marked Z, was taken in the bill book, because no notice of them had been taken on the margin of the bond book. I do not know of any other blank being left, either on the margin of the bond book, or in the bills payable book, excepting No. 5018 and 5019, opposite which is written "not used;" and also No. 5005, on the margin of bond book, where No. 5005 appears to have been cut out, is written by Matthew L. Davis, in pencil, "M. L. D. to be accounted for;" under which is written by said Davis, in ink, "Temporary loan 260.000 Tradesmen's Bk. 4880 shares in name W. P. R. stock to be returned in a few days, and bond surrendered. Cancelled and destroyed."

Being asked, by whom, or for what purpose, was bond No. 5008 used? He answers—I do not know.

HORATIO KINGSLAND.

Nov. 28, 1828.

Francis Graham, being called by Mr. Barker, and sworn, testifies, that six notes or bonds of the Life and Fire Insurance Company, now produced by him, are held by Elisha W. King, the counsel of the Tradesmen's Bank, and with whom deponent is connected in business, in a suit pending between Matthew Reed and the said bank. Said bonds are all drawn in favour of H. Kingsland, and endorsed by the name of Horatio Kingsland, numbered from 2480 to 2485 inclusive, the last for $400, the others each for $1,000, except 2482, which is for $2,000; they bear date the 16th, 17th, and 18th of January, 1826, and all payable six months after date, and all have endorsements on them, as follows:—"Paid 3 mos. interest, April 16," three April 17th, one April 18th, and one April 19th. The bonds aforesaid appear to have been signed by J. G. Swift, Assist. Prest., and M. L. Davis, Secretary.

Samuel L. Gouverneur, being also called by Mr. Barker, and shown the aforesaid bonds produced by Mr. Graham, says that the endorsement on the same, "paid 3 mos. interest," with the dates April 16th, 17th, 18th, 19th, he believes to be in the hand-writing of M. L. Davis; that he has seen said Davis write, and it appears to be his hand-writing, and that all the signatures to said bonds were, as he believes, written by the parties.

Being shown a printed paper purporting to be the affidavits of Shepherd Knapp and others, dated August, 1826, in which it is stated, among other things, that there were 24 shares of the Tradesmen's Bank stock, transferred by William G. Bucknor to as many individuals, one share each, and asked whether he was not mistaken when he said, in his former examination, that it was 20 shares? He answers, that on investigation, he has ascertained that it was 24 shares; but more than two years having elapsed since the transaction, he had forgotten the exact number. He received the money therefor, as he believes, on or about the 27th June.

REMARKS.

By comparing the number and dates of the bonds produced by Mr. Graham, with the testimony of Mr. Kingsland, it will be seen that they are part of those described by Mr. Davis on paper Z., of which there was no account on the books of the Life and Fire; and by comparing the testimony of Mr. Gouverneur with that of Mr. Gantz, it will be seen that the check A., of Life and Fire, for $1,200, not entered, was paid Mr. Gouverneur the day of its date, say 27th June, 1826, for 24 shares of stock, transferred to as many individuals.

The marginal note, written in ink, where bond No. 5008 was cut out, appears from the writing, and other circumstances attending it, to have been placed there after the failure, and after it became public that such a bond was out, which, of course, on account of its magnitude, $260,000, would attract attention.

To me it is incomprehensible why the purchasers of the bank should have been so extremely anxious to conceal their names. There was

nothing wrong in the purchase of a bank for fair and honourable purposes. The purchasers (as I said on the conspiracy trials) had no special duties to perform. Not so with the sellers. They were the trustees of the property of the absent stockholders, and guardians of the interest of the depositors and billholders, and yet they delivered over those trust funds blindfolded to an unknown purchaser, for a bonus, which they put into their own pockets, and, with a single exception, did not allow the stockholders to participate therein, and took away their own notes for two or three hundred thousand dollars, without seeing that equally good notes were left in their place. This was the wrong, and, if the bank was purchased for fair and honourable purposes, the only wrong, and there was no occasion for concealment on the part of the purchasers. Yet so determined have they been to preserve the secret, that the most unwarrantable devices have been resorted to. *I hope and believe, that it was only for the purpose of concealment, that they were resorted to.* It appears strange that Mr. Davis should allow it to appear to the world, as if the purchase was made on his own account. If this had been really so, it would subject him to the most painful imputations—imputations of having sacrificed the credit of the Life and Fire Company, of which he was secretary, whose interest and credit he was bound to protect, by throwing their bonds into the market, and raising money on them at an interest of more than 30 per cent. per annum, and applying the same for his own private purposes; of having drawn the company's money from the bank for his own private speculations, at a time when they were in the utmost need of it to meet their own engagements; of having used for these objects, checks and bonds, signed in blank, by the assistant president of the company, and left in the office for its general purposes, and without having made any record on the books of the company of having so used their checks and bonds; of having filled up the bonds on loose sheets, and not from the bond book; of having antedated the bonds and used old numbers, which had before been used, that none should appear missing in the regular order in which they were usually kept, and of having endorsed on the back of such bonds, "interest paid," when no interest was paid, and when in fact the bonds were not in existence when such endorsement avers the interest to have been paid. In my judgment, higher offences could not be committed by a secretary of a moneyed institution, if done for his own individual purposes; and although very reprehensible if done for the purposes of the company, yet so great is the difference between their having been done for his own account, or for account of the company, that nothing surprises me more in this whole business, than that any man should consent to exhibit himself in the former, rather than in the latter character, when the truth of the matter was beyond all question that he did all these things merely to conceal the fact that the purchase was made for account of the company, as all the checks and bonds issued for other purposes, appear to have been regularly entered, and none others are antedated, or partake of the fiction which so eminently distinguish those used for the purchase of the Tradesmen's Bank; nor does there appear, in the whole investigation before the Master in Chancery, the least reason to suppose that

Mr. Davis ever appropriated a single dollar of the funds or effects of the Life and Fire Company to his own use, or that he ever used its bonds or checks for his own purposes.

When the testimony was about closing, Mr. Riker appeared before the Master, and made the following explanations, which, in my opinion, afford no justification for the sale of the bank to a concealed purchaser, much less for withdrawing good notes, to the amount of two or three hundred thousand dollars, and leaving in lieu thereof the checks of an irresponsible person, who had no money in the bank.

Richard Riker again appears, and states, that from conversations with Mr. Reed, about the time of the agreement to sell the stock of the Tradesmen's Bank, and frequently since, and even to this time, deponent is firmly convinced that Mr. Reed fully believed that Mr. Henry Eckford was the purchaser or principal purchaser of the stock of said bank, agreed to be sold through Mr. Reed, as herein before testified by deponent. He is so convinced, because Mr. Reed assigned to deponent several reasons why he thought Mr. Eckford to be such purchaser, among which were, that Mr. Eckford no doubt wished to increase his influence in the upper part of the city, and that the control of the bank would greatly enable him to do so; and he, deponent, thinks Mr. Reed said it would be beneficial in his business. The deponent believes that Mr. Reed also referred to Mr. Eckford's business as connected with his ship yards.

Deponent recollects very well that Mr. Reed mentioned that Mr. Eckford was ambitious. Mr. Reed has frequently agreed with deponent, that the stock of said bank, if well managed by Mr. Eckford, under the advantages he possessed, might be made a nine per cent. stock; and witness believes Mr. Reed had no doubt Mr. Eckford was a very wealthy man. Deponent further says, that Mr. Reed has not only, as far as this deponent knows, spoken of Mr. Eckford as being the purchaser, as he believed, though he never has said that Mr. Eckford was the purchaser, of his own knowledge, yet has at no time intimated, to deponent's knowledge, that any other person was said purchaser. And deponent is fully satisfied that Mr. Reed, as well as this deponent, has frequently declared that Mr. Barker had nothing to do with said purchase, as he or this deponent knew or believed; and as an additional reason, Mr. Gouverneur, according to the best of this deponent's recollection and belief, in open court, on the first trial, or subsequent to the conspiracy case, testified, that Mr. Barker had nothing to do with the purchase of the stock of the Tradesmen's Bank. And this deponent further says, that it is his present belief, and that deponent has never concealed from any one the fact, that the deponent believed Mr. Eckford to be the purchaser, and that Mr. Barker had nothing to do with said purchase, though deponent must add, that he has never been distinctly informed by Mr. Reed who was the purchaser. Mr. Rathbone attended at the bank, and received the transfer of deponent's stock. The witness conceived Mr. Rathbone to be the agent of Mr. Eckford, and that, among other things, greatly confirmed deponent in the belief that Mr. Eckford was the purchaser.

REMARK.

The Recorder and some others restored their notes to the bank, when required to do so by the present Board of Directors, which I consider an admission of the error, rather than a justification of their conduct, as much so as it was in the District Attorney to attempt to return the three hundred dollars to Mr. Eckford after keeping it one year.

Had Mr. Maxwell pursued the investigation as became a public officer, in place of taking money from the real parties, and devoting himself to the unholy purpose of destroying Jacob Barker, he could have exhibited these transactions on the conspiracy trials in five minutes. He had the bonds mentioned on paper Z, or most of them, with the bond book in court, and by turning to the margin, it would have been seen that they had not been taken therefrom according to the invariable practice of the company in other cases. By turning to the book of bills payable, which he had also in court, it would have been seen that no record had been made of these bonds, and that the numbers they bore were different in dates and amounts. By turning to the blotter, cash book, and list of securities, it would have been seen that nothing had been received for them. By turning to the margin of the check book, it would have been seen that it was the practice of the company to give checks for the interest paid on bonds, however small the amount, and to describe the number of the bond on which the interest was paid, and that no such entry had been made for the interest endorsed on these bonds as having been paid; and by turning to the blotter, he would have seen that no entry was made of any such payment. As to the sellers of the bank, he was in possession of the affidavit of Shepherd Knapp, and others, previous to his declaring himself perfectly satisfied with the conduct of Mr. Reed, and before he excused Messrs. Rathbone and Gouverneur, which affidavit gave him full information of the conduct of the sellers, and of which affidavit I was not then informed. Had it been produced on the trials, the periods when the purchase of the Tradesmen's Bank took place would have been established, and as my absence at those periods was proved, Mr. Maxwell would have been disappointed of his wished-for victim. From the aforesaid affidavit, I make the following extracts:

"*City and County of New-York, ss.*

"Shepherd Knapp, James Hall, Nicholas Gibert, David Seaman, Lewis Seymour, William Thorne, Shivers Parker, Samuel W. Lowerre, Eldad Holmes, William S. Smith, Ebenezer Cauldwell, Henry Anderson, and Joseph S. Brainerd, being duly sworn, severally depose and say, that on or about the nineteenth day of June last, the market value of the stock of the said bank, was about ten per cent. above the par value thereof. And these deponents further say, that thirteen of the said directors, as they are informed and believe, held a large share of the stock of the said bank, each of whom, with the exception of one, had hypothecated the stock so held by them to the said bank, for nearly the amount of the par value thereof, as a security for the payment of certain notes which the said directors had respectively given to the said bank, either for the said stock, or for money otherwise owing by them to the said bank.

"And these deponents further say, that they are informed and be-

lieve, that on or about the nineteenth day of June last past, the said thirteen directors, who had so hypothecated their stock as aforesaid, were called together and convened in secret, and without notice to the other directors, at the house of Matthew Reed, the President of the said bank, and there being so convened, the said Matthew Reed stated to them that, as they had business to transact, it would be proper to appoint a chairman, and, accordingly, one of the said thirteen directors took the chair, whereupon the said Matthew Reed opened the business, by stating that the object of the meeting was to know whether the directors then present would sell their stock, reserving each to himself twenty-eight shares. That it had been ascertained that their stock, after such reservation, would give a majority of all the stock in the said bank to the purchaser, and two shares over, which two shares one of the said directors present agreed to take. That the said Matthew Reed also stated that he was authorized to make an offer for a *majority* of the stock, at a premium of twenty-eight per cent., and he wished to know whether the directors then present would sell their said stock on the conditions following, viz: That they were not to know the name of the purchaser. That previous to the then ensuing election, they were to give irrevocable proxies to the unknown purchaser. That they were not to know who would compose the new direction of the said bank, and were to be kept in ignorance whether any or all of themselves were to be returned as directors or not. That less than a majority of all the stock of the said bank would not be purchased at any price, and that more than a majority would not be taken at any price. That he, the said Matthew Reed, and one other person, were only to be in the secret, or words to the same import and effect. And these deponents further say, that they are informed and believe, that each and every one of the said thirteen directors, including the said president, did agree to the said proposition, and did accordingly sell out or agree to sell out the said stock to some person or persons unknown, at the rate of twenty-eight per cent. above the par value, and eighteen per cent. above the then market value thereof. And that the said thirteen directors did also give their respective proxies to one Samuel Cox, the confidential agent of the said unknown purchaser, to vote on the said stock so sold, or agreed to be sold, for directors of the said bank at the then ensuing election. And these deponents further say, that they are informed, and believe, that one of the said thirteen directors, at the said meeting, did openly offer to the others, there assembled, to sell them, or either of them, any amount of the stock of the said bank, one week after the then ensuing election, at ninety-eight per cent., and that neither of them would give that sum, although each had sold his own stock as above mentioned, at twenty-eight per cent. above the par value, except David Baker, one of the said thirteen directors, who agreed to take one hundred shares in one week after the election, at ninety-eight per cent., and which were afterwards transferred to him, by the procurement of the said director, who so made the offer, and who at the time declared that he would not give ninety per cent. after the election for the stock of the said bank, and thought it would fall as low as eighty per cent. And these deponents further severally say, that they are informed, and do verily believe, that the said stock was purchased by some person or persons, for,

and on account of the Life and Fire Insurance Company, an incorporated insurance company in the City of New-York, which has recently failed.

"And these deponents further say, that it appears by the transfer book of the said bank, that on the said twenty-third of June last past, twenty-four shares in the said bank were transferred to as many individuals, not otherwise stockholders, except as to one, each one share; and these deponents have been informed, as well by several of the individuals to whom the said shares were so transferred, as by several of the present directors of the said bank, and otherwise, and do verily believe that no consideration was paid by either of the said twenty-four persons for the shares so transferred to them, but that the same were gratuitously given to them in order to make them eligible as directors of the said bank, if the same unknown purchaser should so think fit, and that ten out of those twenty-four persons were actually put in nomination as directors of the said bank, by the said unknown person who purchased the stock of the said thirteen directors, and have been elected as such in the manner herein after stated, together with eight of the directors who sold, or agreed to sell out their stock, as before stated." "And these deponents further say, that on the morning of the third day of July last, just before the said election opened, the then board of directors convened at the banking house, where the said election was to be held, and it appearing that Gilbert Coutant, one of the said inspectors, had resigned; they resolved that the other two inspectors be removed; and immediately appointed in their places, John I. Boyd, one of the said thirteen directors who sold, or agreed to sell his stock as aforesaid, together with one Daniel P. Ingraham, and one William Baldwin, as inspectors of the said election. And these deponents further say, that the said last named inspectors were secreted in an adjoining room, ready to take their seats, and did take their seats immediately on their appointment as such inspectors."

"And these deponents further say, that it appears by the books of the said bank, that subsequent to the said election, and on or about the fifth day of July last, the said Samuel Cox, by virtue of a power of attorney from each of the said thirteen directors, (and which these deponents are informed and believe were executed in blank,) transferred four thousand eight hundred and forty shares of the said stock, so agreed to be sold by the said thirteen directors, (the residue of their stock then being hypothecated to other companies or individuals,) unto William P. Rathbone, one of the said directors, in his own individual name." "And it likewise appears from the books and vouchers of the said bank, that the said William P. Rathbone, on or about the date last mentioned, drew a check or checks upon the said bank, in favour of each of the said thirteen directors, for the amount of stock so transferred as aforesaid, at the par value, amounting in all to the sum of two hundred and forty-two thousand dollars, or thereabouts, which was accordingly passed to the credit of the said thirteen directors respectively, upon the said books, and that thereupon the said thirteen directors drew their respective checks upon the said bank on the fund so placed to their credit, with which they took up their respective notes so held by the said bank as aforesaid, and as a security for which their stock had

been, and then was, hypothecated to the said bank as aforesaid. And these deponents further say, that by the books of the said bank it does appear that at the time the said William P. Rathbone so drew the said checks for two hundred and forty-two thousand dollars, and ever since, he had not one cent of money, or any kind of property whatsoever, in the said bank. And these deponents further say, that the said William P. Rathbone is generally reputed, and as the deponents believe, is a person of very narrow circumstances, and of no adequate responsibility."

"And these deponents further severally say, that from the books and documents of the said bank, it also appears that since the said election, instruments in writing payable to order, but commonly called bonds of the aforesaid insurance company, which has since failed, and of which the said Matthew Reed is a director, have been taken by the officers of the said bank as cash, or on which they have loaned money to the amount of nearly thirty thousand dollars."

REMARKS.

These affidavits were sent to a respectable journal in this city for publication at the time, and when they were one half in type, the editors received a letter from a professional gentleman of great respectability, threatening them with a suit if the publication took place. It was therefore suppressed.

Mr. Riker, on the conspiracy trial, stated, that he allowed one stockholder, who was not a director, to participate in his share of the sale, because he was the special attorney of that stockholder, then absent, and said he did so, lest he should be dissatisfied with the change when he returned. He farther testified, that the directors had, on a previous occasion, apprehended that the stockholders intended to change the directors, to avert which, the money of the bank had been appropriated to purchasing up the stock, and that he had taken a portion of such purchases, and given his note to the bank therefor. How far it was proper for directors, by virtue of a power thus acquired over the bank, to sell the bank for their individual benefit, to an unknown purchaser, and to agree to hold the stock, until they had placed the bank in the hands of a new set of directors, whose names they did not know, and which names were to be dictated by an irresponsible agent, several of whom turned out to be insolvent debtors of the Life and Fire Company, which directors were to be in no wise interested in the bank, holding only one share each, for which they paid nothing; and how far it was proper for the sellers to withdraw their own notes, to the amount of two or three hundred thousand dollars, substituting the checks of a person without property or pecuniary credit therefor, or money in the bank to meet such checks, are subjects on which every reader will form his own opinion.

It will be recollected, that the election took place on the 3d of July; that the 4th is a holiday; and that, by the terms of the contract, these notes were to be withdrawn from the bank on or before the 5th of July; consequently, the selling directors were to take away their notes when they gave up their seats to the new directors. Among the latter, as well

as the former, were Mr. Riker, and several others of the selling directors.

By reference to the contract, it will be seen, that the money for the Life and Fire Bonds, for $41,300, received in part payment of the bonus of $84,000, was to be paid to the selling directors immediately after the new directors were put in possession of the bank, namely, on or before the 15th July; and as the Life and Fire were hard pressed for money to meet the bonds issued in the ordinary course of their business, it was doubtless expected that the bank would furnish funds to pay these bonds, and even these few days were anticipated, and the money taken away from the bank by several of the directors, who left the said bonds in the cash drawer in place thereof, as will appear by comparing the numbers of the bonds with Mr. Fall's certificate.

Mr. Fall's Certificate.

Dec. 6, 1828. I hereby certify, that the annexed two Life and Fire notes or bonds, one numbered 2871, for $300, and one numbered 4626, for $1000, were, with many others, found in the cash of the Tradesmen's Bank, when the receivers took possession of the effects of the said bank, July, 1826, counted as cash; and the said bonds were not in the possession of the bank when I left it on the 30th of June preceding.

W. H. FALLS, *Cashier.*

Mr. Riker's Agreement not to revoke his Proxy, until after the election of Directors.

I hereby authorize and empower Samuel Cox to vote for me and in my name and behalf, at an election hereafter to be held for Directors of the Tradesmen's Bank of the city of New-York, as fully and effectually as I could do were I personally present, and further to substitute with like power and authority, one or more person or persons under him. This proxy irrevocable for thirty days.

Given under my hand and seal, this twenty-sixth day of June, 1826.

In presence of R. RIKER. (Seal.)

If these men believed their measures were honourable and lawful, and such as would promote the best interests of the bank, why did they distrust the Cashier, and also inspectors of their own appointment, and so unceremoniously dismiss them, and appoint others more likely to consummate their schemes?

It will be seen by the minutes of the meeting of the evening of the 14th of June, that a committee, consisting of Messrs. Riker, Hammond, and Reed, were appointed to consummate the sale of the Tradesmen's Bank; that Mr. Riker recorded his name as one of that committee, which was equivalent to accepting the appointment; by a memorandum on the bottom of the contract, interest was to be allowed from the 15th of June, which, with the fact that the terms had been adopted by the meeting, indicates that the bargain was verbally consummated on the 15th by the committee, after which it was, and no doubt for the purposes of concealment, determined to exhibit only the name of Mr. Reed; and a power was drawn up and signed by each of the selling di-

rectors, transferring the authority from the committee to Mr. Reed individually, which the Recorder did not only sign, but dated it the 19th of June; he also signed, with the others, one general receipt for the $84,000 bonus: and yet before he knew the said minutes had been produced, or that the power and receipt would be, he testified thus:

Being asked by Mr. Barker—Was Matthew Reed authorized by yourself and others to sell a certain number of shares in the Tradesmen's Bank, in 1826?

He answers—I authorized Mr. Reed to bind myself; I do not know what others did.

Being asked—Was such authority in writing?

He answers—I do not recollect; I am under an impression it was in writing, at all events I was bound by my promise.

Being asked—Was a contract for the sale of that stock reduced to writing, between Matthew Reed, purporting to be of one part, and certain other persons of the other part?

He answers—I never knew of such a thing, until after difficulties in the bank arose; then Mr. Reed showed me such a paper.

Being asked—Did Mr. Reed deliver said paper to you?

He answers—Mr. Reed has assured me he did. I may be mistaken as to its being a contract for the sale of stock.

What an ignorant Judge! How frail his recollection, not to know that his associates had authorized Mr. Reed to sell their stock—not to recollect that he had himself given any written authority—not to know that a paper he held was a contract for this important sale, made in part by himself, which sale had been a subject of criminal prosecution, and he examined as a witness; and he has further testified that he received the said paper in confidence. and as *counsel* for Mr. Reed. This fact being disclosed, I would have withheld from this publication many of the names implicated, if I could have done it consistent with my duty to the public; because men in the ordinary walks of life might, under the guidance and "advisement" of persons occupying high judicial stations, be induced to take part *with them* in transactions which they did not understand, or if they did, which they would shudder at but for the force of the example of judges to whom they had all their lives looked up as correct expounders of law and justice.

Mr. Maxwell, the District Attorney, declared to Mr. Reed, that he was perfectly satisfied with the part Mr. Reed had acted; declared Mr. Rathbone was regenerated; and as to Mr. Gouverneur, the District Attorney, in open court, acquitted him from all blame, although from the affidavits of Messrs. Knapp and others. it appears, that the selling directors were perfectly aware at the time they sold, of the effect which their conduct would have upon the market price of the stock. The facts now disclosed, will enable every man of intelligence to form a correct opinion of the conduct of the Recorder, the District Attorney, and of the other parties concerned, and whether or not I have been wickedly persecuted.

I do not make this appeal to the public with a wish to procure their aid in redressing the wrongs done me individually, or my family, great as they have been. But of the public I do ask, that they will read the

testimony; and when they have read it, I will ask, if they will not redress their own wrongs—if they will permit such conduct in the Recorder of the City of New-York, or tolerate Hugh Maxwell, the District Attorney, in taking money with impunity from "*indicted, but untried and unacquitted individuals.*"

JACOB BARKER.

LETTER VIII.

In publishing the proceedings of the midnight meeting in my last letter, a calculation in the hand-writing of the Recorder was omitted. It appeared that there were 14 persons present who clubbed 6394 shares of stock; the unknown purchaser would only take a sufficiency to control the bank, say 6000 shares, the remaining 394 the sellers agreed to divide equally, when the Recorder makes the following calculation:

$$14\overline{)\,394\,(28}$$
$$\underline{28}$$
$$114$$
$$\underline{112}$$
$$2$$

By reference to the power, it will be seen that these 14 *Directors* agree each to retain 28 shares, and the Recorder also agrees to take those 2 remaining shares in addition to the 28—in all 30.

In my last letter I also referred to the fact that I was under bonds, by the decree of Richard Riker, the Recorder, to the amount of 4000 dollars, not to write libels. The illegality and cruelty of that proceeding may not be fully known to the public. I will therefore state it.

During my absence from the State, at Nantucket, in June, 1826, there was a very exceptionable and disastrous combination formed in this city in relation to the Tradesmen's Bank, in which the Recorder was one of the principal actors. On my return I was charged with having committed the offence, and brought to trial. The circumstances attending the trial created, in my mind, a belief that there was something fearfully corrupt about the City Hall, and also created, as every man must naturally suppose, great solicitude in me to free myself from the unfounded imputations that had been cast upon me. I promulgated my suspicions. I had not then proofs of the appalling facts which are now before the public. My publication was called a libel, and the Recorder fined me therefor 500 dollars, and put me under bonds as above mentioned. On the trial, I relied upon the law, and what the law is, the reader will perceive by reading an extract from the opinion delivered by De Witt Clinton, as Judge of the Court of Errors, and confirmed by that court, which makes the law of this State.

CLINTON'S OPINION.

"There can be no doubt but that malice as well as falsehood is essential to sustain an action of slander. A variety of cases go to esta-

blish that where the words are in themselves actionable, yet, if spoken without any malicious intention, in the confidence of friendship, in the performance of church discipline, in the regular course of judicial proceedings, or in the discharge of the duties of life, an action of slander will not lie, because the circumstances under which they are spoken destroy the presumption of malice, and without malice there can be no slander."

"But there is a certain class of cases wherein no prosecution for a libel will lie, when the matter contained in it is false and scandalous, as in a petition to a committee of parliament, in articles of the peace exhibited to justices of the peace, a presentment of a grand jury, in a proceeding in a regular course of justice, in assigning on the books of a Quakers' meeting reasons for expelling a member, in an exposition of the abuses of a public institution, as in the case of the Deputy Governor of Greenwich Hospital, addressed to the competent authority to administer redress. The policy of the law here steps in and controls the individual right of redress. The freedom of inquiry, the right of exposing malversation in public men and public institutions to the proper authority, the importance of punishing offences, and the danger of silencing inquiry and of affording impunity to guilt, have all combined to shut the door against prosecutions for libels in cases of that or of an analogous nature. (2 Hawk. b. 1. c. 73. s. 8. 4. 531. Bac. Abr. 452. Esp. Dig. 506. and 4 Com. Dig. 717. c. 2.)"

REMARKS.

The Recorder refused to allow me to prove that there was no malice. I took exceptions. He noted them, and promised to give me an opportunity of reviewing his opinion before the Supreme Court. Relying upon that promise, and on the certainty that his errors were palpable and conclusive, and altogether sufficient to render void the whole proceedings, I declined summing up. He charged the jury that malice was not necessary to constitute a libel, and they were governed by his charge. He made a statement for the use of the Supreme Court fraught with errors and misrepresentations, among other things denying that he had so charged the jury, but would not allow me to see it until he had, by imposing the fine, put it out of my power to have it reviewed there. He stipulated to hear the case argued during the vacation of his court, but on the last day of the term he gave notice that if I had any thing to say on the subject, it must be said that day before one o'clock. Although in the habit of meeting things with some promptness, I was not prepared to quit my other avocations at a moment's warning, and appear before the court to discuss points of law; but I was determined to resist to the last, and was on my way to the Hall to make the effort, when I had the good luck to meet my much lamented friend, the late Mr. Emmet, who turned back and performed that service for me in a masterly style. But he might as well have talked to the winds. The sentence had been previously decreed, and the Recorder read it from the bench the moment Mr. Emmet closed his remarks. From the case made by the Recorder, I make the following extracts:

RECORDER.

"The defendant complains that, in both cases, injustice has been done to him; that the court and the jury have erred; that the jury have found verdicts against him contrary to the evidence, and that the court has misconceived the law; that the court, in the first case, not only excluded testimony which ought to have been admitted, but rendered a judgment not warranted by law, and, in both cases, misdirected the jury. If this be so, if the court has mistaken the law, or the jury found contrary to the facts, Mr. Barker ought to have relief. It is always the duty of the court to give to the accused in a criminal case every legal advantage. The maxim that it is better for ten guilty men to escape than that one innocent man should suffer, has its foundation in the unchangeable principles of equity, as well as of humanity. If therefore the jury have found verdicts not justified by the proof; if the court has rejected any evidence which ought to have been admitted; if the court misdirected the jury to the prejudice of the defendant, or has rendered a judgment not warranted by law, the mistake of the court, or the misfinding of the jury, ought to be corrected. Every impartial tribunal, and every upright judge, can have no wish but to do justice according to law. If an error be committed, especially if against the accused, let it be set right."

"To enable the defendant to avail himself of any error committed by the court or jury, the court will now proceed to state all the material facts and circumstances which arose in each case, and all the material principles of law which were ruled by the court.

"If any thing essential to a just decision of either of the cases shall be omitted by the court, the defendant may supply it by an affidavit which will be certified by this court so far forth as it may be correct."

On the case made by the Recorder, from which the above extract is taken, he made an endorsement in words following:

"The within is correct. The original proceedings in chancery, and the original affidavits to be referred to if necessary.

"*May* 17. R. RIKER."

REMARKS.

The original affidavits referred to by the Recorder as forming part of the case, were those setting forth the previously expressed opinions of jurors contained in the publication *misnamed a libel*, and not those which the Recorder promised to allow correcting his errors, and which, in his private letter to the Supreme Court, he objects to their receiving. Not believing it possible that a judge who knew his duty so well, and who dwelt with so much feeling, humanity and eloquence on the rights of the citizen, intended it all for the purposes of deception, I availed myself of the apparent fairness of his promise, and presented my own and sundry other affidavits to the Recorder, pointing out his errors and omissions. To the accuracy of the most material of these corrections the Recorder certified, viz. among other things he omitted the testimony of George W. Strong, Esq., the most material witness in the cause, and he erroneously stated the testimony of Samuel H. Macy,

which testimony I detailed in said affidavit, and submitted it to the Recorder, who certified to the accuracy of my statement of Mr. Strong's testimony, recapitulating it; but as to that of Mr. Macy he remarked in words following:

EXTRACT.

"Mr. Macy swore as stated by Mr. Barker."

"R. RIKER."

By this certificate it will be seen that the Supreme Court could not know to what Mr. Macy had testified without the affidavit, and yet the Recorder, unknown to me, wrote a private letter to the judges objecting to their receiving the affidavits; consequently requesting that if they should pass judgment at all, that they should do it on the false statement, which leads to the conclusion that the Recorder intentionally denied me a fair trial; that he intentionally made a false statement of the case; that being conscious thereof, he inserted the deceptive clause promising to correct his errors if there were any; and that he never meant to give me an opportunity to have the case reviewed.

The affidavits of the jurors were as follows:

Court of General Sessions of the Peace in and for the City and County of New-York.

Jacob Barker } *ads.* The People. }

Edmund Haviland, being duly affirmed, saith, that he was one of the late jury which convicted Jacob Barker of publishing a libel on Richard Hatfield; that after the Recorder had delivered his charge to the jury, and when they were about retiring to deliberate on the case, this affirmant inquired of the Recorder, Must we convict Jacob Barker, although we should think there was no malice? To which the Recorder replied, "Most certainly."

This affirmant further states, but for this he should not have agreed to the verdict. EDMUND HAVILAND.

Affirmed before me, this 17th day of May, 1827.

W. SEAMAN, Commissioner.

This has been submitted.

R. RIKER.

Court of General Sessions of the Peace in and for the City and County of New-York.

Jacob Barker } *ads.* The People. }

William Galloway, being duly sworn, testifieth and saith, that he was one of the jury which tried Jacob Barker for publishing an alleged libel on Richard Hatfield, and that the Recorder stated the law to the jury in such a manner as for it to appear that malice was not necessary to constitute a libel, and that after the jury retired, several of them stated to

this deponent that they did not believe the defendant was influenced by any malicious intention, but that as the Recorder had charged that that made no difference, they felt it to be their duty to agree to a verdict of Guilty. This deponent further testifies, that he does not now believe, and never did believe, that Jacob Barker either wrote or published the book in question, with any malicious intention.

WILLIAM GALLOWAY.

Sworn this 18th day of May, 1827, before me,

JAS. OSWALD GRIM,
Commissioner to take the Acknowledgment of Deeds, &c.

Court of General Sessions of the Peace in and for the City and County of New-York.

Jacob Barker
ads.
The People.

Samuel Candler, being duly sworn, testifieth and saith, that he was one of the jury which tried Jacob Barker for publishing an alleged libel on Richard Hatfield, and that the Recorder stated the law to the jury in such a manner as for it to appear to this deponent that in the opinion of the Recorder, malice was not necessary to constitute a libel, and that after the jury retired, several of them stated, in the presence of this deponent, that they did not believe the defendant was influenced by any malicious intention, and that they believed he had good cause for alarm; that this deponent was of that opinion, and he believes that all the jury were of that opinion. SAMUEL CANDLER.

Sworn this 18th day of May, 1827, before me,

BENJ. DOUGLASS SILLIMAN,
Commissioner, &c.

THE RECORDER'S PRIVATE LETTER.

Court of General Sessions.

Jacob Barker
ad. Libel on Richard Hatfield.
The People.

The Same
ad. Libel on Abraham B. Mead.
The Same.

In the above causes the defendant requested the Recorder to report to the Supreme Court the substance of the evidence and the decision of the court upon the questions of law which arose upon the trials.

Mr. Barker has lately submitted *his own deposition and the deposition of some of the jurors* to the Recorder, which are marked "*submitted.*"

It is proper that the Supreme Court should be apprised that it is *not* intended by the court below, or by the Recorder, to admit either the accuracy of those depositions, or the propriety of such depositions being received. Respectfully submitted.

R. RIKER.

To the Honourable the Judges of the Supreme Court.

New-York, 21st May, 1827.

REMARKS.

The judges of the Supreme Court, aware of their duty not to permit any side-bar influence, and too much the lovers of justice to al ow any secret *ex parte* proceedings, read this letter in open court, and declared that they considered it equivalent to a request, that they should not consider the case, as they never gave advice at the instance of the parties, and only when requested by the court below. On hearing this very extraordinary letter read, I immediately waited on the Recorder, and demanded a certificate that the court below did request the Supreme Court to consider it, which he gave in the words following:

Court of General Sessions.

The People *ad.* Jacob Barker. } { The Same *ad.* The Same.

It was the desire of the Court of Sessions, and of the Recorder, that the report and opinion of the presiding judge should be reviewed by the Supreme Court, but we did not think that the affidavits ought to be received. Respectfully submitted.

R. RIKER, Recorder.

To the Honourable the Judges of the Supreme Court.

25th May, 1827.

The Supreme Court continued to refuse to consider the case, not on account of any thing said in these letters, but "because," said the Chief Justice, "the court below proceeded to pass sentence before the case could be got before them, which was *unprecedented in judicial proceedings*, it being the universal practice to defer sentence until the opinion of the Supreme Court was known." Judge Woodworth added, "and this too when the counsel for the party only suggested that there was good reason to suppose an error had been committed by the judge who tried the cause, and in a case where that judge had promised to give the party an opportunity to have his case reviewed by the Supreme Court, the obligation to have suspended further proceedings was much greater; yet the Court of Sessions proceed to fine Mr. Barker, and the money has been paid, and passed beyond the control of this court; therefore if it should interfere, and attempt to reverse the proceedings below, such reversal would be unavailing; "and," Judge Southerland said, "this court cannot consent to take any proceedings, which, when taken, would be a nullity."

REMARKS.

It will be seen by the preceding, that the Recorder perfectly well understood his duty, as also the rights of the parties appearing before him. What followed, I think, will convince the reader that the Recorder violated that duty which he so well understood, and grossly invaded the rights of the citizen whose misfortune it was to be in his

power. That the legislature considered him violating the constitution in putting me under bonds, is manifested by the revised laws, together with the report of the revisors thereon.—4th part. p. 55.

TITLE VI.

"OF JUDGMENTS; THE MODE OF ENFORCING THEM, AND OF WRITS OF ERROR THEREON.

"ARTICLE FIRST.

"*Of Judgments; the Evidence thereof, and the mode of Enforcing them.*

"§ 1. Every court of criminal jurisdiction, before which any person shall be convicted of any criminal offence, not punishable with death or imprisonment in the state prison, shall have power, in addition to such sentence as may be prescribed or authorized by law, to require such person to give security to keep the peace, or to be of good behaviour, or both, for any term not exceeding two years, or to stand committed until such security be given. But this section shall not extend to convictions for writing or publishing any libel; nor shall any such security be hereafter required by any court, upon any complaint, prosecution or conviction, for any such writing or publishing."

The revisors say, when they reported that section, (pp. 55, 56,) that it is, "substantially conformable to the common law, with the exception of the last clause, which is new. By the amended constitution of this state, (Art. 7, § 8.) 'Every citizen may freely speak, write and publish his sentiments, on all subjects, being responsible for the abuse of that right, and no law shall be passed to restrain or abridge the liberty of speech or of the press.' It is conceived that this provision virtually takes away from the courts the common law power of binding over a party guilty of publishing a libel. At all events, shackles of this sort are inconsistent with the spirit of the constitution and the principles of our government, and it is proposed to abrogate them."

EXTRACTS FROM MR. EMMET'S SPEECH.

Under any other circumstances, I should consider an apology due from me for the unprepared state in which I undertake to discuss the questions now before the court. It was not until after the opening of the court this day that I was retained as counsel in this case; and the circumstances of this trial, connected with the facts set forth in the affidavit read to the court, induced me to believe that an argument would not now be required.

Although unprepared, I hope, from general reasoning upon the law of libel, to be able to satisfy the court that they ought not to suffer sentence to pass against the defendant. The argument I am about to offer to the court I can present with the more confidence, from being able to say that when I read the testimony and proceedings on this trial in the public newspapers, and before I was engaged in, or could have anticipated any connexion with this cause, when it passed under my review merely as a common observer, noting it among the occurrences of the

day, I was surprised at the law laid down in the course of the trial, and seriously doubted its accuracy.

Setting aside the particular facts of this case, it seems to me that a rule has been laid down by this court which is matter of vast public concern, and which it behoves us all to examine well, if we would sustain the liberty of the press, and give full and proper scope to the freedom of discussion.

I need not tell the court that I allude to that rule wherein they have said that malice is not a constituent part of the offence to be passed upon by the jury; and wherein they have also said, that unless the defendant can prove the truth of the libel, proof of the motive with which he published it is not to be addressed to the jury, but to the court in mitigation of punishment, after the verdict has been rendered.

Can this be law? In a civil action for a libel, malice is the gist of the offence, either to be inferred from the libel itself, or proved from extraneous facts. Much more so in an indictment. I scarcely know, indeed I may say there is not, in the whole range of criminal law, a case, except where an act has been created a positive offence by statute, where the motives of the defendant do not become the subject of proof before the jury. In murder there must be pre-determined malice proved or inferred. Even in manslaughter, accidental killing is not enough; there must be proof of sudden passion, or death arising from an intentional wrong of some kind.

Let me not be understood that the prosecutor must prove malice apart from the libel. The doubt which may arise relative to the proposition which I have laid down is not on account of any defect in the proposition, but in the introduction and application of testimony. Thus, in murder, when it is proved that one man killed another, the jury may infer from proof of the fact and manner of killing, that it was done maliciously, but it will not be urged that the party charged cannot show it was done in self-defence. So in libel, the jury may infer from reading the libel itself, that the motive of the publication was malicious, and they ought so to infer when it calumniates character without cause and without excuse—yet still the publisher may show from other parts of the publication, and from extrinsic facts, that the publication was without malice and for justifiable cause.

It may perhaps be said, that malice is a question of law and not of fact. To a certain extent, high authorities may be produced to support and contradict that position, but only to a certain extent; for I believe it never has been maintained, except where the defendant has offered no evidence to establish a justifying excuse. Where he has offered any, that, and with that, the whole matter must be submitted to the jury. But as it is unnecessary to discuss that point, I shall content myself with saying, that I think the judges, who have considered malice under any circumstances as an inference of law, have confounded *prima facie* presumptions from uncontradicted and unexplained testimony, and therefore conclusive presumptions from evidence, with legal inferences. I do not believe that malicious intention is properly a presumption of law, either in civil or criminal cases; but even if it be, that can make no difference in criminal prosecutions, wherein our sys-

tem of the law expressly provides that the jury are judges of the law as well as of the facts, and therefore, in either point of view, they are to pass on the intention of the publisher as a constituent part of the offence. Two of the jurors, at different times, clearly expressed their opinions that malice was not imputable to Mr. Barker; perhaps the others thought the same thing. So strong was that opinion, that the jury came in to ask the opinion of the court, whether they might acquit the defendant if they thought he had no malice. To which the court replied, by the charge of which I most respectfully but strenuously complain. Suppose the jury had brought in their verdict that Mr. Barker had published the matter set forth in the indictment, but not maliciously, could the court consider this any thing but a general verdict of acquittal? At any rate, could the court convict the defendant on it? How then can it be said they have nothing to do with the question of malice or no malice, when their verdict negativing it would have acquitted the defendant? And can any man undertake to say, that if the jury had not received this explicit or erroneous charge from the court, they would ever have brought in a verdict of guilty?

During the struggles in England relative to the law of libel, I do not believe that it was ever seriously contended that malice was not at the foundation of the offence. In all the inroads which were made upon the law of libel before, and more especially by, Lord Mansfield and his successors, and to restore which the Act of Parliament was passed, the doctrine that the malicious intent of the writer or publisher was not, either as matter of law or fact, the test whereby the crime was to be judged, was never avowed. I consider that the decisions which went to restrain the rights of jurors to judge whether the publication was a libel or not—whether it improperly reflected upon the conduct or character of the prosecutor which prevented the truth from being evidence, were innovations upon the common law, and that the intervention of legislative power was not to correct any error or supply any deficiency in that law, but to put an end to the innovations upon the rights of jurors which Lord Mansfield particularly had attempted to make. The English statutes and our statutes were passed, not for the purpose of giving more extended liberty to writers and publishers, but to restore these rights in those parts where they have been invaded, and for that reason their phraseology and provisions are confined to those rights. We must, therefore, not look to the statutes for the purpose of ascertaining what defence the publisher may make, or to show to what extent he may prove his motives, or that he published without malice, but we must look to the common law, and although the statute says nothing as to the malicious intent of the party, the strong and only inference is, that in this particular the rights of the press had not been openly violated.

If the motives of the party be matter to be passed upon by the jury as a constituent part of the offence, then I say proof of those motives is to be addressed to them, and not to the court, in mitigation of punishment. Nothing is to be submitted exclusively to the court by affidavit that goes to the gist of the crime. The facts which are to be presented to the court in mitigation, are properly those which cannot be resorted

to as a defence—facts which do not go to show that a verdict of guilty ought not to be rendered, but that although the crime has been committed, it has been committed under such circumstances as to call for mercy, even at the hands of justice.

If I am right in what I have said, then the defendant ought to have been allowed to give in evidence any facts, whether they constitute a part of the publication or not, which can by any possibility be associated with the motive for publication, however slight that connexion may be, and the jurors, either as passing on the law or the fact, are to judge of the motive, whether just or malicious, and the weight and bearing of the testimony. Were it otherwise, the court, by keeping back the testimony, would constitute themselves the sole judges of the purpose of the publication, and of the malice of the publisher. Under this view it appears to me that the testimony which was rejected by the court, and which is set forth in the third and fourth points of the case read, ought to have been admitted. As to the pamphlet itself, it seems to me not susceptible of a doubt, but that the defendant was entitled to have the whole or any part of it read.

But let us examine the libel itself as set forth in the indictment, and the testimony given for the purpose of seeing whether the testimony offered ought not to have been received, in order to show the truth of the publication.

The nature of that publication, I confess, as treated by the court, seems to me to have been misunderstood. It has been taken for granted as charging Mr. Hatfield with corrupt conduct, and on that interpretation of it most of the decisions of the court depend. I view it differently. It charges no corruption on Mr. Hatfield; it only states facts, from which the reader would be led to infer corruption; but it would be the inference of the mind, not the allegation of Mr. Barker. He stated them as circumstances which caused him alarm and anxiety, and he did no more. As to him, then, the only inquiry should have been, Were the facts true? Were the alarm and anxiety real? And had they a rational foundation? If these matters were proved, he could certainly avail himself of the constitutional defence, that he published the truth with good motives and for a justifiable end; and as the first thing to be proved was that he published the truth, he should have been permitted to give in evidence every thing that tended to prove the truth of the facts he had stated in his publication.

In addition to other facts, he has proved that after the general panel had been drawn, which consisted of two hundred, he informed Mr. Strong, that there were three on that panel who ought not to sit on a jury to try him, that they were personally hostile to him, and that Mr. Davenport and Mr. Norwood were two of them, and he thinks Mr. Mead was the third. That Mr. Davenport was the first juror drawn from that panel, and Mr. Norwood the second, and Mr. Mead the fifth —that the mode in which the box containing the ballots of jurors was shaken by Mr. Hatfield, attracted the observation of a bystander, who thought it was moved in a manner not to agitate the ballots; and at the time it so much excited the defendant's attention, that he went to the clerk and asked for liberty to shake the ballot box, which was refused.

This testimony was given or offered to prove the truth of the libel, by showing that the facts averred in the publication were truly stated, that there was apprehension, (and, if the court please, good ground to apprehend,) as to the accidental drawing of the jury, and that the mind of the defendant was truly and justifiably filled with doubt and alarm. Indeed, there is but one assertion upon the face of this libel, the truth of which is not entirely proved.

I humbly contend that the court erred in their view of the publication, when they charged the jury that they must either convict Mr. Hatfield, a witness in the case, or Mr. Barker. As the bringing home a paper by the accredited agent, who received it from a member of the legislature, was not criminal, and therefore, if an innocent, though mistaken allegation of that kind was made, it was not a libel; and also, that the court erred when they rejected all proof that did not go to establish corruption in Mr. Hatfield, and refused to admit proof of the facts stated in the publication as the foundation for the defendant's alarm, and which would unquestionably show that there was very justifiable cause for alarm.

If we examine the facts admitted to have been proved by the defendant, as they must have presented themselves to his mind, it must be obvious that it would have required more than common confidence in individual integrity, not to have apprehended that this was not all the result of accident, and more especially when we consider the situation of the defendant as one on trial. Here are twelve jurors to be drawn from a panel of two hundred, the chance that Mr. Davenport was to be drawn first was as one to two hundred. The chance that Mr. Davenport and Mr. Norwood would be drawn the two first, was as the square of two hundred; or as one to forty thousand. When we consider, in connexion with this, that Mr. Mead was also on the jury, that the chances that Mr. Davenport, Mr. Norwood, and Mr. Mead, the only three persons previously designated as objectionable and hostile by Mr. Barker, would not all be on the jury would be infinitely greater—and further, that the two first jurors might become *triers* of the qualifications of the other jurors, and admit them into the jury box, and that these two jurors were the personal enemies of the defendant: and I ask what ordinary mind could withstand the conclusion that all was not accidental in the drawing of the jury? With chances forty thousand to one against the happening of an event that did happen, attended with the other circumstances which arose on that trial, who will tell me that the mind of any man, whose interests were deeply involved in the result, would have no misgivings—that the party on trial would be filled with doubt and alarm? It is impossible, a mind so situated could not resist such doubts—no confidence is strong enough to encounter these things and not hesitate. I, who in these latter days are more ready to set down extraordinary events to the roguery of man than to miraculous interposition, would have doubted. If the jurors had all the matters put before them, they must have believed that there was good ground for doubt, apprehension, and alarm.

In what I have said it will not be supposed that I intend to cast any imputation upon the character or conduct of Mr. Hatfield. The result,

as explained by the witnesses on the part of the people, was that of accident; but unexplained, every man might honestly, and with good motives, have thought and said otherwise, and there lie the justification and defence of Mr. Barker.

REMARKS.

After perusing the speech of Mr. Emmet, and considering the painful circumstances which threatened to overwhelm every thing that rendered life worth preserving, the reader will not have much difficulty in coming to the same conclusion as the jury did, viz. "that there was no malice in my publication."

I do not wish to be unreasonably severe or illiberal in the conclusion which the proceedings force on my mind. I interpret them to have been for the single purpose of preventing me from investigating through the press the Recorder's own conduct, and in accordance with the successful attempts made by some of the parties to intimidate the editors of the newspapers from publishing the affidavits of Messrs. Knapp and others, mentioned in my last letter. If this is too harsh a conclusion, I hope that a sufficient apology will be found in the dreadful wrongs that have been done me; and if the Recorder's conduct is entitled to a more favourable construction, I trust he will receive it from the public.

JACOB BARKER.